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ABSTRACT

This book describes the actions that led to the 1973 United States Supreme Court case to establish administrator rights, "Holstrop v. Illinois Junior College District 515." The book was written by the plaintiff, who believed that he had been illegally removed from his presidency at Prairie State College, a junior college in Illinois. Part 1 describes the context of the college and community and the events that created conflict among the school board, community, students, faculty, and administration. Parts 2 and 3 describe the college president's perceptions of the conflict that developed over funding a Black Studies program. Part 4 describes subsequent legal proceedings. Information on how to protect administrators' civil rights and jobs is offered in Part 5. "Holstrop" applies to all public administrators, managers, and supervisors who work for a tax-supported local, state, or federal agency. All forms of civil service, not only education, are affected. A glossary and extensive appendices are included. The appendices contain the full briefs and arguments by each of the contesting parties and the opinions and decisions of the lower courts. (LMI)

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BY

RICHARD W. HOSTROP

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# PRAIRIE STATE

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# THE CIVIL RIGHTS OF ADMINISTRATORS

BY
RICHARD W. HOSTROP

AN ETC PUBLICATION

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*Elmer Gertz* —A passionate defender of First Amendment rights.

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*James Pappas*—Fighter for justice against the overwhelming odds of the Establishment.

*Dale Collins, M.D.*—Chairman of the Board of Trustees, Prairie State College (Emeritus), for his many years of dedicated service to education; a board member who knew the difference between policy-making and administration…and practiced it.

## Dedication

*LeeOna S. Hostrop*—My best friend, sweetheart, and wife.

*Holly L. Hostrop*—My older daughter who showed great strength in attending Prairie State College after I no longer was there.

*Kristin I. Hostrop*—My younger daughter whose high principles were enhanced by the events at Prairie State College.

*Robert C. Baker*—That rare individual who remained a steadfast and loyal friend even when it would have been far more politic to have put distance between himself and me as so many "fairweather friends" did at Prairie State College.

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# Prologue

*Prairie State — The Civil Rights of Administrators* could just as well have been titled *Administrator's Landmark Case, Behind Closed Doors, But for $5,532.31* or a dozen other related titles. As the reader proceeds into the book, s/he will see why. In short, *Prairie State—The Civil Rights of Administrators* is as much a gripping story as it is a "lesson" book. It is *the* story of the rights now established for administrators under the Constitution of the United States. It is the only book of its kind because it reports in detail the *first* such United States Supreme Court tested case to establish administrators' civil rights. This, then, is the administrator's own Constitutional rights "handbook," his/her own "guidebook," a pathfinder book which resulted from a refusal by an administrator, a chief executive, to submit a resignation when demanded to do so. It is *this* administrator who tells his story and informs his colleagues, and other interested persons, of the civil rights established for them for the first time beginning in 1973.

This book also provides a historical series of "snapshots" of events during the most trying time higher education ever faced—the Vietnam War/civil rights/Black Studies activists period. Prairie State College faced it all…and much more than most.

*Prairie State—The Civil Rights of Administrators* is divided into four parts. Part I, "The Curtain Rises," is largely narrative and descriptive in style. It describes as a sociologist or cultural anthropologist might the social-economic-political-ethnic-religious 120 square mile milieu of Illinois Junior College District 515. This part will aid the reader to better understand the events that follow.

Part II, "Three Months of Hell," is written as though this book were a novel since only a novel can suggest the full flavor of the subtleties and nuances of a dynamic situation. Thus, in this part, there is much dialogue. Part II confirms the old adage that "truth is stranger than fiction" and "all the world's a stage."

Part III, "The Aftermath," moves back from dialogue to narration. It moves into areas quite unfamiliar to nonlawyers, but into an area that should prove fascinating to TV fans of law-based programs and such lawyer-writers as Louis Nizer. But one thing will be familiar to all…the recognition that the lessons of appeasement are still valid today.

Readers who are too busy to do much reading or are faced with an immediate problem of protecting their civil rights and/or jobs can turn straight to part IV for useful information and/or immediate help. The two chapters making up "Protecting Administrators' Civil Rights" are practical, straightforward "what to do" chapters.

At the end of the book, a "Glossary of Legal Terms…" is provided for the ready reference of lay readers. Terms included are ones which the reader will encounter in this book and/or ones which one is likely to encounter in civil rights law suits.

The "Appendices" are extensive. They have been included for the benefit of the administrator, manager, or supervisor who now is in trouble…or who may one day be in trouble over holding her or his job. But they are provided even more particularly for the benefit of the practicing attorney who may one day be called upon to protect an administrator, manager, or supervisor in a civil rights action. The *full* briefs and arguments by *each* of the contesting parties in *Hostrop v. Illinois Junior College District 515* are included before the United States Supreme Court. The Opinions and Decisions of each of the lower Courts is likewise fully reported. Attorneys, legal scholars, law students, and laypersons who have a particular interest in the law will find the appendices fascinating, some inclusions nothing short of brilliant, all immensely useful.

*Hostrop* is now the law of the land as the law pertains to the civil rights of administrators, managers, and supervisors. This law pertains to every public administrator, manager, or supervisor who works for a tax-supported local, state, or federal agency. *Hostrop* thus applies to all such personnel as are employed in public education, libraries, hospitals, police and fire departments, and every other form of civil service, including GS and FSO employees under the vast federal bureaucracy. In most instances, *Hostrop* also applies in whole or in part to workers in the private sector, particularly in non-profit organizations such as private colleges and universities.

In short, *Hostrop* provides the shield against arbitrary and capricious actions by superiors who would deny freedom of expression under the First Amendment or summary dismissal in violation of one's due process rights under the Fourteenth Amendment.

In summation, *Prairie State - The Civil Rights of Administrators* is one of those very few *required reading* books for *everyone* who is an administrator or a manager, a chief executive or a supervisor, or a member of any governing board. It is a book just as important to one who may one day be called upon to dismiss an employee as it is to the employee who may one day be faced with a dismissal. Unless the one who may one day be called upon to initiate a dismissal of a subordinate knows the parameters to which the superordinate is bound, as defined by *Hostrop*, in the end s\he may be much sadder and poorer as the price of becoming wiser...the hard way. Certainly, that proved partially true of the combatants in the landmark *Hostrop* case. There Defendants fell into a nine year pit in which they found it very difficult to extricate themselves. There Plaintiff had to claw his way out of a quagmire of damages to his personal and professional reputation...damages never fully recovered. This book, then, is to aid *all* parties—the would-be dismissers as well as the intended "victim" of the dismissal. *Prairie State - The Civil Rights of Administrators* intended purpose is to clearly describe the events of *Hostrop* so that the same gross mistakes made by both Deferndants and Plaintiff are not made by others. This, hopefully, is accomplished by fully exploring and explaining the *Hostrop* case and decisions as to the requisite dismissal procedures of an administrator, manager, or supervisor. As a consequence, it is hoped and anticipated that dismissals or requested resignations of such leaders will be minimized and those that are initiated are done so only in full accordance with Constitutional freedoms and with fairness and justice for all.

Richard W. Hostrop Palm Springs, California

## THE IMPOSSIBLE DREAM (THE QUEST)

**(Words by Joe Daringly and Music by Mitchell Leighton)**

To dream the impossible dream,
To fight the unbeaten foe,
To bear with unbearable sorrow,
To run where the brave dare not go.

To right the unrighteous wrong,
Though the goal be forever too far,
To try, though you're wayworn and weary,
To reach the unread star!

This is my Quest, to follow that star,
No matter how hopeless, no matter how far,
To fight for the right without question or pause,
To be willing to march into hell for a heavenly cause!

And I know, if I'll only be true to this glorious quest,
That my heart will lie peaceful and calm when I'm
laid to my rest.
And the world will be better for this,
That one man, scorned and covered with scars,
Still strove, with his last ounce of courage,
To reach the unread stars!

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"The people who really harm freedom of speech are not so much the would-be suppressors as those who refuse to express their convictions for fear of retaliation; the right of free speech remains only for those with the courage to express themselves freely."

Sidney J. Harris

# Part I

# The Curtain Rises

# Chapter 1

# The College District

I had enjoyed a pleasant, rare free Saturday afternoon with my family until the ring of my telephone on July 11, 1970 drastically altered the course of my life and that of my family.

My wife, LeeOna, answered the telephone. She said to me, "It's Lester Kloss."

I took the call from the College Board Chairman who said, "Be at Anthony Scariano's law offices at four p.m. sharp on Monday, July 13." With no explanation, the Board Chairman hung up.

Neither LeeOna nor I could guess the reason for this strange request, especially since only three months earlier I had been given a new two-year contract, with a $3,000 raise, to replace another two year contract that still had another year to run. This, however, is not to admit that there were not serious problems at the College, for indeed there were. And these problems, later to be gone into, were seriously exacerbated by some Board members who refused to keep to their proper role as policy makers. They instead tried, with some success, to insert themselves directly into the actual administration of the College, with resulting "mixed messages" to the faculty.

Before going into what happened on Monday, July 13, 1970...and the eventful days that followed, it will be helpful to the reader to understand the geo-political-socio-economic conditions of the college district and the College itself in 1970.

The college district, legally known in its corporate status as Illinois Junior College District 515, consists of one comprehensive, public community college—Prairie State College. The college district itself encompasses 120 square miles of southern Cook County and northern Will County. Within the college district there are 17 communities with a combined population of nearly a third of a million persons. These communities range in wealth from among the very poorest to among the very wealthiest in Illinois in terms of per capita income (East Chicago Heights in 1970 was ranked 165th and Flossmoor 4th among 166 incorporated communities in the state). Located 35 miles due south of Chicago, bordered by Indiana on the east and the nation's oldest junior college to the west, Joliet, its racial and ethnic composition as well as its socio-economic status, is a near perfect microcosm of the United States as a whole. The college enrollment at the time consisted of approximately 5,000 full-time day students.

Added to these characteristics is a phenomenon which I personally know only exists in one place, Italy. There is intense and fierce jealousies and rivalries between many of the 17 communities making up the college district. Indeed, a famous sociological book was even written about one of these communities, Park Forest, in William H. Whyte's best selling , book, *The Organization Man*. Each such town, as in many parts of Italy, conducts itself as a near city-state. East Chicago Heights has a nearly 100 percent African-American population. Chicago Heights has a very large Italian and Polish population. Park Forest largely consists of young executives of all racial and ethnic backgrounds who are "upward bound," or as one former College Board member from Chicago Heights once remarked, "Park Foresters are people with champagne tastes, but with a beer income." Homewood has a large Jewish population among its large middle class residents while the wealthiest communities, Flossmoor and Olympia Fields, largely consists of WASP families whose family head commutes daily to spacious executive offices in Chicago. Serving these diverse communities is a twice weekly newspaper, *THE STAR*, whose contents and views are a good reflection of the social milieu of the area.

The city-state characteristics of many of the area communities, and mirrored in the *THE STAR*, is also carried over into the area schools. The first law of city-states is that if you were not born there, then forever you are destined to remain an outsider. City-states are easily identifiable by their invidiousness toward the "outsider" and an incestuous defensiveness which occurs if the "outsider" dares question any established practices by its citizens. That tragi-comedy characteristic was all too evident in an attitude in much (but not all!) of "South Suburbia." In succeeding pages, specific examples will emerge in a natural way as the drama of the events unfold which led to a landmark decision by the United States Supreme Court as to the civil rights of administrators.

As above suggested, the provincialism carried from the Old World is, not surprisingly, manifested in the area schools themselves. In the first three years I was employed as President of Prairie State College, the largest elementary school district within the college district had three different superintendents. Moreover, the superintendent of three of the four feeder high school districts had been replaced by new ones. The College, in less than four years, had four presidents and 21 different board members! Two more presidents came after my departure within four years.

There are two "games" that correlate with the preceding happenstances, "Fire the Old Chief," and "Hire a New Chief." The rules of these games are simple. When the board members who hired the current school chief no longer make up the majority of board membership, then the new majority is allowed to play "Fire the Old Chief." When that game is over the second game, "Hire a New Chief," is played. These games are repeated as many times as a new board majority emerges. An interesting aspect of the "Fire the Old Chief" game is almost always the current chief school executive is still under contract which is usually only *partially* paid off so as to secure a resignation. Though local boards are continually crying for more money, invariably they find $25,000 or more "extra" dollars to pay off the current chief executive so as to be able to quickly move on to fun Game Two. More often than not, the replacement hired lives closer to her/his new position than was true of his/her predecessor. Increasingly, localism seems to be the rule rather than the exception.

Of course, one of the implicit understandings of "Fire the Old Chief" game is that the chief executive "cooperate" by resigning and accepting a partial pay-off of his/her existing contract. Indeed, that "cooperation" had been evidenced by every single chief academic and public executive throughout the nation in such a situation since our nation's founding—that is, until July 23, 1970. That is why this book has been written. The rules of "Fire the Old Chief" have, until 1970, been totally lopsided and unfair—boards have always won, administrators have always lost. This book tells how the rules have been changed, what the administrator can do so that the rules are made as nearly fair for him or her as for his or her superiors.

Not surprisingly, the faculties of local schools within a college district also mirror the social milieu in which they live. This was particularly true at Prairie State College. The faculty that I inherited in 1967, for the most part, had been former Bloom High School faculty who had joined the college faculty when it was split away from the high school in 1966 to form its own corporate identity. The provincialism of this group was striking—"Once a 'Bloomite,' always a 'Bloomite.'" Such cohesiveness insured that newer faculty members seldom ever were to achieve real faculty leadership—only a "Bloomite" was worthy of a meaningful faculty leadership role. This is not to say that there were not excellent teachers among "Bloomites," for indeed there were. But conversely, the split away from the high school not only resulted in some of the best high school faculty joining the college faculty, but some of the worst teachers were transferred out as well.

In this introductory chapter it should not be taken that all 17 communities within the college district manifested the city-state syndrome, that all citizens were or are provincial, that all members of boards of trustees were or are egregious, that all faculty had or have small town minds. These, obviously, would neither be true nor just statements. Like anywhere, there are many area residents whose character and high principles could not be surpassed anywhere. There are a number of true cosmopolites and even a few genuine Renaissance Men and Women. In short, Illinois Junior College District 515 is an accurate reflection of many places within the United States. This reflection is neither laudable nor condemnatory. It simply reflects what life is.

# Chapter 2

# Halcyon Days — Sometimes

In 1967 the typical method of selecting a president of a community college was for the board of trustees to employ a university consultant. This consultant, whose specialty was community college education, would make candidate recommendations. Typically he would screen from 50 to 100 applications. Usually from these he would he would recommend from three to five candidates for a personal interview before the board of trustees.

In 1967 I was fortunate to be offered three such presidential interviews and two job offers—one in California where I had spent most of my life and one in Illinois. I chose to come to Illinois from California largely because of the opportunity to participate in the educational planning of a new $22 million campus, with all the curricular ramifications that such educational planning properly engenders. It is noteworthy that in my three interviews in 1967, only the full board interviewed me (and in one instance my wife was also included in the interview process).

Today the selection process for a community college president is much different than was true in 1967. Faculty now have a major role in the selection process. Frequently support staff and students likewise are very much involved in this process. This is as it should be. In fact, I am sure had this selection procedure been operative at Prairie State College in 1967 it is likely that I would not have been chosen for even an interview, let alone have been offered the presidency. And, if by chance I had been offered the presidency, I would *not* have accepted. The faculty was not ready for an "outsider" — especially one from California. Had the faculty of 1967 participated in the presidential selection process, it would have been painfully evident to each of us—the "change agent" on the one hand and the "defenders of the status quo" on the other—that such an oil and water mixture would not likely result in a happy professional marriage. Yet the "marriage" did work reasonably well for quite sometime, but at considerable personal cost to the faculty on the one hand and to me and my family on the other.

In 1967 the Prairie State College faculty had little concept of what a comprehensive, public community college was. There were only eight occupational programs in 1967 — and the more "elitist" ones at that: nursing, dental technology, computer programming, and the like. The role-concept of a large majority of the faculty was perceived as that of screeners of the unfit for university transfer. During my early tenure that conceptual view of a community college by the faculty was perforce altered—drastically. In less than three years eight occupational programs grew to 25—and with it, a new breed of faculty. Moreover, the African-American faculty grew from one to ten and professional staff was recruited outside Illinois so as to reduce provincialism and to achieve a far more collegiate environment

It seems certain that had the faculty been involved in the presidential selection process in 1967 the College, three years later, in 1970, likely would have changed but very little. Perhaps, from the long view, it was wiser for boards of trustees to alone select their presidents during the rapid growth period of community colleges across the nation during the 1965-1970 period. Had they not done so, appointments would have been much more endogenous than exogenous, the colleges more secondary than postsecondary in outlook and thrust. California, Florida, Michigan, and Texas were the only states that had major training centers for community college administrators at the time. These administrators *had* to be exported to other states to get the right kind of job done. This was necessary because of the phenomenal growth of community colleges—a growth that resulted in one new college being built every week! Moreover, this burgeoning movement was too important to rely on local secondary school administrators for the assumption of leadership roles, individuals who lacked both training and experience in community college leadership. Trained and experienced community college administrators of this period served as catalysts—and are deserving of the nation's thanks—particularly in view of the fact that they frequently were dropped into hostile and defensive environments.

At Prairie State College, the faculty during the first week of my arrival had an afternoon punch and coffee reception for me at the College. My wife was not invited. I learned later that the faculty had considered having a dinner for my wife and me, but decided against it because they felt this might put them in a "position of weakness" in "dealing" with me. I was to quickly learn that the faculty believed their interests could best be served by "confrontation politics" rather than "cooperation" which would only serve to "co-op" them to their detriment. In short, it was made plain early in our dealings, in essence, we were to meet only across the bargaining table.

My position with the faculty was not helped my first year when I did not recommend contract renewals for four non-tenured faculty members. In the eight year prior history of the College, when it had been an appendage of the high school, this had happened in only one instance. Clearly, this was threatening. The faculty attitude was that once employed, that employment was tantamount to instant tenure. Through the instigation of several members of the faculty, I was hung in effigy by several score students over this matter.

The changes that occurred at Prairie State—making faculty uncomfortable by introducing them, via consultants and new staff, to the idea that knowledge can be imparted through other means than the lecture/text, talk/chalk methods; substantially increasing career education offerings; bringing in staff outside Illinois; significantly increasing minority staff—was not only supported by the board of trustees who employed me, but was applauded by them—and I daresay by much of the community who followed College affairs. One thing is certain, if a chief executive has the full backing of his/her board of trustees, the difficult but often necessary decisions can be made. But without such support, not only is little possible, but chaos can result...as was all too painfully proven true later on at Prairie State College.

The preceding is not to state that input by the faculty, students, and others is not desirable. On the contrary, input by them is absolutely necessary and the *ownership* of most decisions as well. Nor is any of the preceding to suggest that the faculty's resistance to change, ipso facto, means all of my presidential decisions were right or the best ones. This would be far from the truth. I freely admit I made my fair share of mistakes—especially during my first year when I should have sacrificed some progress by more consultation in advance of decisions with responsible faculty and student leadership.

Without a doubt, the basic events that transpired at Prairie State College during the 1967-69 period were being similarly replicated in scores of communities across the national landscape. Individuals were trying to find their place in this relatively new kind of educational institution. There was jockeying for power. There was hostility and suspicion that always accompanies new operations and new people from new places. In short, the scenarios played out at Prairie State College during the 1967-69 period could be considered somewhat typical—almost halcyon, certainly compared to student eruptions that occurred on many two-year college campuses in 1970.

In the next and subsequent chapters, it will become evident that while Prairie State College and the presidency had much in common with similar community colleges during the trying period of 1965-70, there were certain unique and significant differences from most other such institutions. One significant difference has already been suggested in the first chapter—the absence of a knowledgeable, experienced, and qualitative board of trustees seated in 1970. Above all other factors, the stain of shame on Prairie State College is most due to the decisions made by the board of trustees then seated.

# Chapter 3

# The Black Studies Program

As a bellweather state, California was the first state to experience legitimate demands for a long overdue recognition in academe of contributions by blacks and other minorities to American society. These demands, seldom "politely" requested, began most notably in the early 1960s at San Francisco State College. Soon, similar militant demands spread throughout California's larger institutions of higher education. It was not long before the upper eastern seaboard was also experiencing the California experience. Like converging, marching armies—one coming from the West, the other from the East—the entire country was soon engulfed and embroiled in demands by black student militants. Liberal and radical white supporters gave added strength by echoing black demands. The demands included not only offering *Black Studies* programs, but frequently also included demands for black faculty, *and* screened by black students. There were demands for separate black centers and black dormitories. And there even were demands for separate "black budgets" controlled *solely* by directors of Black Studies—with Black Studies budget funds to be deposited in black owned banks. The Vietnam war was very unpopular among students and further profoudly exacerbated conditions of upheaval on college and university campuses at that time.

Until 1968, the small four-year colleges and the community colleges (even the largest ones), had experienced little disruption caused by the "Black Movement" (and Vietnam War). But then all hell broke out among many such institutions. The scenarios were similar to those that had recently occurred on the larger sister campuses (a few years later similar happenings occurred on many urban high school campuses). Again, the outburst of demands on smaller four-year colleges and community colleges began in California—most notably among the Peralta community colleges in the Berkeley area. Black Panthers regularly attended the Peralta board meetings—lining up against all four walls and occasionally leaning over to the chief executive and whispering in his ear, "We're watching you 'baby.'" Soon the California pattern was being repeated in the East—and then once again converging from both directions to meet in the midwest a year or so later.

It was early in 1969 when it seemed that Prairie State College had been hit by the very center of the "storm of demands." However, it was not a spontaneous eruption, but rather was carefully planned, blueprinted, and skillfully orchestrated. The conductor of the scenario that occurred, according to the intelligence unit of the Cook County Sherriff's department, had been and was active in a similar way in a number of other communities in northern Illinois, even though a resident of the Prairie State College district. This individual, a charismatic black medical doctor, was able to readily gather together a small but highly vocal and tenacious group to work behind the scenes or to be "actors" on his "portable" stage. All that the "conductor" required was an incident—any incident that involved a black person. Such an incident provided an opening at Prarie State in January 1969.

A member of the full time faculty, Townsend, who was black, unbeknownst to the administration, and in violation of Board policy, had sought and accepted another *full-time* teaching position in one of the City Colleges of Chicago. When it was inadvertantly discovered that Townsend was teaching full loads at two different institutions, he was given a choice of resigning from one place or the other. The administration of the City Colleges of Chicago took a similar stand. So, at first, did the respective Boards of Trustees. It was felt that such a workload, requiring an inflexible time schedule, which precluded nonclassroom professional responsibilities and inadequate class preparation and student evaluation, was detrimental to students at both colleges who were in his classes. However, Townsend, refused to resign at either place. At Praitrie State, he appealed to students to protest this requirement. In Chicago he hid behind the shield of the powerful teacher's union.

In the end, after the Prairie State College Board of Trustees felt compelled to move to larger quarters to conduct its first meeting in January of 1969 because of the overflow crowd, the Board, over my objections, capitulated on the spot. The Board publicly promised not to pursue the matter further (state legislation, however, *was* pending to prevent such occurrences in the future.) The capitulation only occurred after a stormy session in which Board members and I were told by a self-declared Black Panther, "We ain't goin' to take any more of this shit! If you 'motherfuckers' don't stop persecuting the professor, we goin' to burn you down!" The spokesman was not even a resident of the college district nor were more than half of the young blacks in the audience. They had been "imported" for the occasion by the "conductor" of this orchestration. The "conductor" moreover, it was later learned, had testified as a character witness on behalf of the imported Black Panther at a recent trial in another community. Nor was this the first or the last community where the "bit actors" were transported across college district boundaries to enact similar scenarios. The "conductor" was Dr. William Jackson. Jackson was elected to the college board in a bitterly fought 1969 election, with the endorsement of the *STAR* . I had gone to the editor stating it would be a disaster for the college to have Jackson on the Board, but was told by the then editor, "Better to have Jackson on the inside where he can be watched than on the outside making mischief." Readers can decide for themselves who was right on this matter as the drama of Prairie State College further unfolds.

The Board's capitulation and appeasement led that same night, not surprisingly, to further demands. Next came the insistence by the packed audience to immediatley inaugurate a full Black Studies Program. Preliminary steps had already been taken in that direction. As a result, when the demand was presented, I called upon Lindstrand, the faculty member charged with this leadership responsibility, to report progress made to date in this direction. Instead, Lindstrand, livid in color, emotional in tone and voice, shouted, "I'm not going to bail you out this time, *Doctor* Hostrop!" Lindstrand's emotional outburst is explained by the fact that he along with one other, Jensen, had been an administrative intern the previous year. But Lindstrand had not been chosen to become an administrator at the college while Jensen had. From that evening forward, Lindstrand did everything possible to undermine my position at the College—and was successful to a large degree.

After I was able to compose myself from this unexpected outburst, I managed to explain to a near total unreceptive audience that just the previous day an advisory committee consisting of students and community members had been chosen to work alongside faculty members from the History, Psychology, and Social Sciences departments as a first step in expanding the college's Ethnic Studies Program.

When I finished speaking a well-dressed, young and attractive, serious-faced white female rose and passionately declared, "It's just the same old garbage. We want action now! All of us know blacks have been oppressed for more than 300 years!...More committees to study the problem is just plain bullshit! The time for study is past! The time for action is now!"

Cheers followed from the orchestrated audience...all of which was eagerly noted and recorded by the bullet-like movements of yellow pencils belonging to the local press.

The Board Chairman declared, at 30 minutes before midnight, that the meeting would adjourn at midnight. Further demands for the immediate implementation of a Black Studies Program, staffed exclusively by blacks, continued until midnight.

Dr. Jackson, the "Conductor" and self-appointed community leader at that 1969 January meeting, attended the next Board meeting. At that meeting he insisted on the right to appoint half of the community members to the Ethnic Studies Advisory Committee that I had discussed at the previous Board meeting. Over my and one other Board member's objection, the Board Chairman's views prevailed. The demand was granted.

The Board Chairman insisted it would quiet "the conductor," that the advisory group would fall of its own weight through internal squabbling. He was right in part but gravely wrong as well. The Council lasted just long enough to mould the Ethnic Studies Program into a Black Studies Program that was both racist and militant. There was insistence that prospective teachers in the program be interviewed and approved by black students. The students were supposed to determine if prospective teachers were "black" or if they were "oreo" (black on the outside, but possessing a 'white attitude' on the inside). Only *true* balcks would do. I firmly resisted the view of "the conductor," the "conductor's" group of radicals, and certain members of the Social Sciences Department who, like the "conductor," also insisted that prospective faculty for the program had to be interviewed and approved by the black students. I issued a memorandum to all departments that I would not recommend any prospective faculty member to the Board of Trustees who had been interviewed by students unless *every* department agreed to have students interview and approve *every* prospective candidate. The outcry by the outcriers both within and without the college was vociferous until I received and published a reply to an earlier inquiry I had made to the U.S. Office of Education which upheld my position under Title VI of the Civil Rights Act of 1964. Reverse racism was not to be allowed.

It was only a short while after "the conductor" had set the stage for outside pressure that internal pressure mounted in the formation of a Black Students' Union. I was informed by a black student that Dr. Jackson, the "conductor," was directly responsible for the formation of the BSU at Prairie State

College. I was not opposed to a Black Students' Union...only opposed to external rather than internal forces as the genesis. A week after the Board had capitulated to Jackson's demand that half the membership of the Black Studies Advisory Committee be those selected by this future Board member's coterie, the BSU prresented me with six demands strangely familiar to those previously submitted by Jackson:

> We the Black Students feel that the demands must be met by March 15, 1969. This is ample time in our opinion. Any prolongment will be interpreted as a denial of the following demands.
>
> I. Black History
> Black instructors—We feel the need for Blacks to teach Afro-American courses. We feel that the time element is important. The course should not only be offered at during the morning and night but during the afternoon also.
>
> II. Black Literature
> We demand funds for more Black literature. The final approval must be given by a special committee from Black Students, activated by February 29, 1969.
>
> III. Student Government
> A Black student representing the Black Student Union should be present at all student government meetings.
>
> IV. Black Holidays
> Black holidays, honoring great Black men of America and the world should be declared so they may gain greater acceptance in 1969. Therefore it seems appropriate to publicly

suggest a list of proposed Black holidays to honor men whose life and accomplishments have been pivotol in the advance of freedom and progress for the Black man.The suggested holidays include:

January 15—Martin Luther King, Jr.
February 14—Frederick Douglas, abolitionist and civil rights agitator
February 28—Malcolm X, social and economic theorist and lecturer; leader of black masses.
March 5—Crispus Attucks, first to die for freedom in the American revolution.
May 1—Operation Breadbasket Day
August 29—DuSable, first settler of Chicago, explorer, trader.
December 19—Dr. Carter G. Woodson, historian and writer; the "father" of Black history.

V. Black Teachers
We feel the need for Black teachers greater in the areas of counseling, physical education, English and history. We feel that there should be at least one Black teacher in every department of Prairie State College. To be acted upon immediately. If there are any questions concerning these demands, you may contact the President of the Black Students Union, Melvin Frelon.

VI. Hiring of Black Teachers
We, the Black students of Prairie State College College feel that

> Calvin Savage does not meet the requirements set up by the Black Students Union. Therefore, we disapprove of his appointment to the Prairie State College staff. The Black Student Union is interested in the hiring of Black teachers. Calvin Savage in our opinion is not Black. We feel that he should not be hired. This demand is to be acted upon immediately.

I responded to these demands signed by the BSU President, in writing, as follows:

> I have requested Dr. Richard Jones, Vice-President of Student Services, along with the help and assistance of the Student Affairs Committee, to meet with you and your officers—or whomever you designate to discuss the Black Students' Demands.
>
> I have further instructed Vice-President Jones to put in writing any agreements reached for the benefit of Black students.
>
> Any and all agreements which are reached by you with Vice-President Jones and the Student Affairs Committee will be respected and honored by me.
>
> You may be assured that if you are not satisfied with the results obtained that I will personally sit down with you and other BSU representatives. Prairie State College must be as relevant to Black students as to white students.

> I believe that the BSU can be a very positive force on campus—for Black and white students alike. I am looking forward to the positive contributions which the BSU can make.
>
> Vice-President Jones' secretary will schedule a meeting at any time convenient to you, in his office or at any location you designate. Feel free to get in touch with her as soon as you please.

Shortly following my response to the BSU, the Social Sciences Department circulated to other academic departments and the student newspaper the following:

> 1. The Social Sciences Department favors the establishment of the Black Studies Program and the introduction of relevant Black materials iinto courses presently offered by the Department.
>
> 2. The Social Sciences Department favors consultation with Black students and with representative members of the Black community in all aspects of the foregoing.
>
> 3. The Social Sciences Department invites the Psychology, History and all other interested Departments of Prairie State College to support and sustain these resolutions.

Further support for the Black Students Union demands and for the resolutions of the Social Sciences Department came in the form of a widely distributed underground newspaper:

PROCLAMATION

WE THE MEMBERS OF THE FREE STUDENT COALITION, DO HEREBY TAKE A POSITION OF FULL AND UNEQUIVOCAL SUPPORT BEHIND THE BLACK

STUDENT UNION DEMANDS. WE FEEL THAT THE DEMANDS ARE REASONABLE AND JUST; THEY SHOULD BE IMPLEMENTED IMMEDIATELY AND WITHOUT FURTHER ARBITRATION. WE WILL SUPPORT ANY MEASURE NECESSARY TO MAKE THESE DEMANDS EFFECTIVE.

SHOULD THE ADMINISTRATION AND THE STUDENT SENATE CONTINUE IN THEIR APATHETIC AND INEFFECTIVE FASHION, THUS MAKING DEMONSTRATION A NECESSITY, EACH MEMBER OF THE FREE STUDENT COALITION WILL SUPPORT AND PARTICIPATE IN THESE DEMONSTRATIONS IN HIS OWN FASHION. SHOULD THE BLACK STUDENT UNION BE FORCED TO TAKE A MORE MILITANT STAND, EACH MEMBER OF THE FREE STUDENT COALITION WILL SUPPORT AND PARTICIPATE IN ANY BLACK STUDENT UNION AND/OR FREE STUDENT COALITION ACTIVITY AS HIS OR HER CONSCIENCE DICTATES.

Through a series of meetings between the Vice-President of Student Services on the one side—and always a half-dozen or more black students in support of the BSU President on the other side—a signed agreement was achieved on the day of the deadline set by the BSU. It had been a far from easy task to reach a signed agreement between the administration and the BSU. That an agreement was eventually reached was largely due to the good sense of the BSU leaders. They did not permit themselves to be used as pawns by groups and individuals within and without the College who were trying to do so.

In reaching an agreement with the BSU, the administration's first choice for Director of Ethnic Studies was rejected by the BSU. Further recommendations were coordinated through the Social Sciences Department which had the responsibility of working out the details of the program until, in reality, a *Black Studies* Director could be hired. Raymond

Lindstrand, my nemesis and the then Chairperson of the Social Sciences Department, was the individual primarily responsible for recommending the employment of the Director of Black Studies.

If by design or by coincidence, the Social Sciences Department Chair recommended the proposed Director of the Black Studies Program during the two-week interval I was absent on vacation in July 1969. The Vice-President of Instructional Services accepted Lindstrand's recommendation. However, had I been on campus I would have rejected the nominee as unqualified. The Director's qualifications included having only taught in an elementary school and playing in a band. He was also accepted as being "truly Black" by black students although after he was hired it was learned that he had a white wife and white step-children.

I first met Bejamin Cooke in the evening just prior to the first Board meeting in August of 1969. However, I had been made very much aware of his presence during the several days prior to the Board meeting after I had returned from vacation. Adminstrrators were tearing their hair out over the Black Studies Director's budget demands. The recommended $12,000 for the program's operating expenses submitted by the Social Sciences Department Chair Lindstrand was challenged as woefully insufficient. An additional $30,000 had been demanded. Nevertheless, after considerable staff discussion and further analysis of the proposed budget to be adopted by the Board the following month, I was prepared to recommend the full $42,000 requested. This amount was in addition to professional salaries. Five minutes before the August Board meeting, Cooke strode into my office unannounced and after mutual self-introductions, said, "I haven't had a chance to come in and see you before. But now that I'm here, I'll come straight to the point. I need more money than what has been proposed."

I replied, "I am pleased to inform you, Mr. Cooke, that I am recommending the full $42,000 you requested."

To this the new Director responded, "Well that's fine, Doctor. But that isn't enough. I need $89,000 to do the kind of job that needs doing."

I said as evenly as I could, considering my shocked surprise, "That will be impossible. There is not sufficient money in the institution to provide the kind of funding you are suggesting...I am already late for the Board meeting, I must go now."

Cooke obviously was prepared for my answer. Following me into the Board Room was a "Rambo squad" of about 50 persons that had been specifically recruited to make demands directly to the Board (most likley by Jackson). After all, the Board had been intimidated into beginning the expanded program in the first place a year earlier than had been originally planned so it must have been logically reasoned that the same intimidating tactics would likewise work again to increase the budget of the Black Studies Program. However, Board members had learned their lesson. They were not to be so easily intimidated this time.

There were a series of overt and covert threats during the next seven weeks while the 1969-70 budget was being developed and considered. I was cornered by Jackson and several of his followers. They threatened to use "all means necessary" to remove me from my position as President if I refused to recommend the $89,000 demanded by the Director of the Ethnic Studies program. After the second Board meeting in August, which lasted past midnight, I tried to start my car only to find that much of the wiring had been ripped out, thus making it inoperative, and having to hitch a ride home. The area newspapers were contacted in an attempt to exert public pressure on the Board to increase the Black Studies Program budget via "Letters to the Editor." Each Board meeting was packed with supporters who demanded increased funds for the fledging program. This highly vocal, militant, and disciplined minority, however, barely masked the more subtle clamor from the community at large who were insistent that such massive funding for the Program *not* be provided. In the end, the total budget approved was $49,510. This, of course, was considerably more than the $12,000 recommended by Social Sciences Department Chair Lindstrand, but not drastically more than the $42,000 I had originally recommended. Certainly, it was far less than the $89,000 demanded. But far worse in the aftermath than the final increase in the Program's budget by an additional $7,510 was the hostility and polarization that was engendered by the bypassing tactics of the Black Studies Director and his militant supporters. The established procedure for budget requests was through the administrative apparatus *first*, not first directly to the Board. Members of other college departments were highly resentful of this direct approach to the Board. There were strong feelings among the faculty in departments other than the Social Sciences Department that their own programs had nearly been or now were underfunded. Many white students felt that too many concessions to only eight percent of the student population had occurred. Students of Italian and Polish ancestry, half-seriously, demanded special ethnic studies for them. A number of citizens at large told me that the tactics of the Director and those associated with him had so alienated them and their friends that the College could never again expect to win any additional tax increases. They were right. In three subsequent tries for a tax increase there were three defeats.

The Black Studies Program should never have been allowed to expand to the degree it did at the time. No program begun under fire and hastened along with the threats of violence is likely to succeed. The College already had been among the very first in Illinois to have offered Afro-American history classes. It was judiciously expanding its programs in the ethnic studies area in full recognition of the great injustices perpetrated on minorities in our nation. An awareness and sensitivity to righting minority injustices had already been well-established by 1969 which made it unnecessary to create a Black Studies Program via baptism by fire. The development of a full and viable program, without threats and coercion, likely would have become a reality in the fall of 1970 rather than in the fall of 1969. But that extra year's delay would have been well worth the price. The curriculum and associated activities could have been more carefully planned. The good will of the community could have been maintained and necessary tax increases approved. One of the many lessons of Prairie State is that appeasement never works. Appeasement only serves to feed those of insatiable appetites for power, who give back little in return for the power that has been relinquished to them.

The hastiness in establishing a full-blown Black Studies Program ultimately cost the institution dearly. The reputation of the College was severely damaged as a result. The College's problems were further exacerbated when the Board was sometimes intransigent in releasing funds to the Black Studies Program which it had already approved. Nor was the institution's reputation in the 17 communities it served enhanced when Acting President, Ashley Johnson, in late 1970, submitted a massive budget increase for the Black Studies Program; which the Board adopted by a split vote the following year...and which, in turn, led to the immediate resignation of two Board members. Funds that were needed for the adequate funding of other College programs then suffered. The Beecher School District, which largely through my efforts up to 1970, were heavily leaning towards joining the Prairie State College District, instead joined the Kankakee Community College District—thus losing what could have been valuable additional assessed valuation to the College. Moreover, Prairie State could not even get the approval of a modest nine cent tax hike in 1970 by the district voters. Finally, the decisions of Board members seated after April of 1970 resulted in legal fees of over $100,000 to the College as a result of barring me from office, primarily over the issue of the Black Studies Program—money that could have instead gone into meeting the needs of *all* students. Thus, like a boomerang, the hastily conceived and executed Black Studies Program came back full circle to severely weaken the financial program for all students—for black as well as white students in the overall picture. Once again, the revolutionary approach to change proved inferior to the evolutionary one.

# Chapter 4

# The 1970 Board Election

Just prior to the April 1970 Board election I asked incumbent Board members to consider my status with respect to continuing employment at the College. Each year since I first came to the College my status had been considered just prior to The Board election. Consideration was given at this time since the incumbents best knew the quality of my work. Though my current contract still had more than a year to run—through June 30, 1971—annual contract consideration by the Board also served as an evaluation process of my past year's performance. Should no contract change occur as a result of this annual consideration, then I would know it was time for me to begin to look elsewhare for another position. But as a consequence of deliberation, the incumbent members of the Board of Trustees replaced my existing contract with a new two-year contract which extended my employment through June 30, 1972. They also voted a $3,000 raise for me for the 1971-72 academic year. As will be commented upon in later chapters, the subsequent Board challenged the validity of this contract.

Two seats on the seven member Board of Trsutees of Prairie State College were open for contest in the April election of 1970. The incumbent Board Chairman, a truly outstanding and dedicated trustee, chose not to run after having served the College well for nearly ten years. The other incumbent, also an excellent trustee, chose to run but was defeated by a narrow margin. The loss of these two trustees to the College drastically shifted the power locus from the eastern portion of the College district to its western and more affluent portions. Because of the city-state milieu of the College district, This drastic shift in geographical representation proved highly detrimental to the welfare of the College.

When I was employed on July 1, 1967, all seven trustees were residents of Bloom Township. Less than three years later the Board had its membership churned over three times due to retirements, losses at elections, moving away to change jobs, a wife's suicide. Moreover, with the April 1970 election, the last two residents of Bloom Township on the Board went off the Board. Bloom Township, the township that had started the College, was now without any representation. I also was now faced with an unprecedented situation for any public body CEO. In less than three years, on a seven member board, I found myself serving 21 different Board members, with not even one remaining incumbent who had a hand in hiring me. Not an enviable situation to be in.

The two seats available on the Board of Trustees in the April 1970 election were contested by six candidates.—the aforementioned incumbent from Bloom Township, an elementary school principal who was a puppet of "the conductor," a spouse of one of the Prairie State College faculty union negotiators, a husband of one of the College's older students, a paint salesman and a chemist for Sherwin-Williams paint. By close margins, James Griffith and Anthony Hannigan, both from the paint industry were elected. Besides sharing employment in the same industry, both men were also active members of the Republican Party which vigorously worked for their election.

Prior to the election, I had been cautioned by two different individuals to be especially watchful of Griffith. Griffith, I was warned, seemed to have a definite anti-administration attitude, a personal animosity towards me. They were right, but for what reason I still do not know. A permanent chip seemed to be carried on the shoulder of this highly aggressive, arrogant, abrassive, and insensitive individual.

I will never forget the first Board meeting following the April 1970 election. The first item of business was to elect new officers. For Chairman, Board members elected Lester Kloss. This was a dangerous omen for me in absence of any representative left from Bloom Township. It had been Kloss who had vigorously opposed the site of the new College buildings in Bloom Township. He, instead, tried to have the College located in the western portion of the College district where he lived. Though the site had already been selected prior to my arrival from California in 1967 to assume my presidential duties, my refusal to try to change the already decided upon and partially paid for site, led to a blsitering letter dated October 1967 from Kloss to me. He wrote:

> "....You have elected to play 'Chicago Heights politics.' That will be beneficial to you in the short term but disastrous in the long run. You may not realize that 60% of the 5215 voters live outside Bloom Township."

Added to this clear threat was now a new trustee whom I had been warned in advance of the 1970 Board election is "out to get you." Griffith was not slow in acting in accordance with that warning.

After the organizational portion of the meeting had been completed in which a Chairman, Vice-Chairman, and Secretary were elected, a proposal for the approval of several new curricular programs was presented to the Board for its consideration. As soon as the proposals were presented, Griffith all but shouted, "How do you expect Board members to read this stuff? It's been so poorly reproduced that it's nothing but a bunch of garbage!"

Even other Board members appeared dumfounded by this outburst—not so much by what had been said, but by the way it had been said. No Board member, up to this time, had ever come on so strong and direct on any matter—and this was this Trustee's first Board meeting. What would he be like after being on the Board for a time had to be a question on everyone's mind.

Everyone waited for me to respond. I simply said, "We had a breakdown of the duplicating equipment we normally use for reproducing curricular approvals....We had to go to ditto. We though that the proposals were at least readable."

"You should have waited until the next meeting then to present these proposals....I can hardly make out the words," the new Board member defiantly rejoined.

"Because the proposals must also receive state approvals, and we need to get the various curricula into next year's College catalog just a few weeks away, we couldn't wait until the next Board meeting," I answered as calmly as I could.

"Well, I'll vote for them this time...but I'm putting you on notice...if I ever receive such garbage again, I'm going to vote not to even have them considered, Trustee Griffith retorted.

The next day the new Board member was the talk of the campus. The administration made half-hearted jokes all day, referring to each other's work as "garbage."

Not only did I have to face up to threats to my survival as President of Prairie State College from Kloss and Griffith but Jackson, "the Conductor," and now a PSC Board member as well. On October 20, 1969, in the house of the elementary school principal who had run unsuccessfully for a seat on the Prairie State College Board, Jackson told the President of the Prairie State College Faculty Senate, "If you will work internally within the College to try to get the faculty to demand Doctor Hostrop's resignation, I will work out in the community and on the Board to try to do the same...and for your cooperation, I will be supportive of faculty requests for salary increases and the like." The PSC Faculty Senate President, very ethically, reported this conversation to me following the meeting he had been called to at the elementary school principal's house the previous day. Jackson and the elementary school principal were very much opposed to me because of my resistance "to give away the store" to Cooke, the Black Studies Director. As reported earlier in this book, at a social gathering, Jackson, the elementary school principal and another unsuccessful PSC Board candidate Jackson had gotten to run for the Board "cornered me" in a small room and threatened to "remove" me from the PSC presidency unless I met their demands to fully support the demands of Cooke. I refused to meet their demands.

All the ingredients were now present to play "Fire the Old Chief" and "Hire a New Chief." Not a single member of the Board now seated had had a hand in employing me. Moreover, the largest township in the College district was not represented by a single Board member. In less than three years Bloom Township's representation had gone from seven to zero Board members. There were at least three of the seven Board members oppossed to me for various reasons. In such a situation, a chief executive must recognize that in most instances his/her effectiveness is gone. S/he will not be able to achieve genuine support of his/her Board—they are too intent on getting on to the game of "Hiring a New Chief"—a new chief whom they are convinced can be found who is vastly superior to the "incompetent incumbent" they were forced to inherit due to the lack of good judgment of their inferior predecesors. If "Hiring a New Chief" first requires "Firing the Old Chief," rather than receiving a resignation, that just heightens the exhilaration of playing "Hiring a New Chief."

In my naivete of 1970, I thought that the possession of a new written two-year contract would provide me with the needed strength and security to make the tough administrative decisions required during the turbulent time Prairie State College was in. I was wrong because the newly seated Board members would have been satisfied with nothing less than total *administrative* decisions as well as policy making powers as the price I would be required to pay for the "privilege" of remaining in office. This, I refused to do. This refusal led to my dismissal.

My refusal to surrender administrative power or to submit a resignation, however, has now made the rules of "Fire the Old Chief" almost as fair to the "Old Chief" as is for a Board. This is now equally true for administrators below the chief executive level. Administrators *do* have civil rights. No administrator need ever again play "Fire the Administrator" against a superordinate who makes all the rules and then serves as both judge and jury as well. This *was* the way "Fire the Old Chief" and "Fire the Administrator" games were played until May 7, 1973, but no more.

In later chapters, clear suggestions will be offered the reader as to what can be done to lessen the chances for an unwarranted dismissal and what to do if unjustly faced with a possible dismissal.

# Part II THREE MONTHS OF HELL

# Chapter 5

## Internecine Warfare

The gauche behavior of Griffith at the organizational meeting of the Board in April of 1970 did not go unnoticed by perceptive faculty members—nor by others. There now was a realization that there were at least two Board members who were noticeably hostile towards me—Griffith and Jackson. Jackson was "The Conductor," the one who had been in the vanguard of establishing an "instant" Black Studies Program. Among the Trustees now seated, Jackson had been the programs only proponent. Other Trustees had unwillingly been dragged along in giving the program "instant" birth, largely due to unfounded fears. They feared the physical consequences to personnel and facilities of the College if they failed to meet the highly vocal and militant demands set forth more than a year earlier for the "instant" and wholesale expansion of the then existing Ethnic Studies Program. Once done, Jackson continued to actively involve himself in the Program, both inside and outside of Board meetings. My opposition to the "instant" establishment of a "full-blown" program resulted in my earning Jackson's wrath. He was determined to oust me by foul means from the office of president if he could not do so by fair means.

The open anti-administration attitude displayed by Jackson and Griffith in the Spring of 1970 created a climate that polluted the atmosphere of the College. Jackson had built a potential machine of destruction a year earlier in the form of the "instant" Black Studies Program, Griffith had turned it on at the organizational meeting of the Board in April of 1970. Each of the seven Trustees eventually took a turn driving the machine of destruction. So did some members of the staff—beginning among some members of the black staff.

During the "Three Months of Hell" at Prairie State College, beginning about April 24 and continuing through July 23, 1970, there was a severe problem that can best be described as internecine warfare. An internal power struggle among three black professional staff members for the personal allegiance of black students occurred. There was a pragmatic realization that numbers provide political strength for activist political programs as well as providing a protective shield as a defense against job loss. With sufficient numerical strength, active student support frequently allows license for unbridled demagoguery as the academic incompetent to hold on to his job. In this context, at Prairie State, it was easier and more expeditious for the Board to fire the President of the College than to fire the Director of the Black Studies Program.

The manifestation of "tribalism" is, of course, not always so dramatic as making a "sacrificial lamb" out of a chief executive to appease forces of questionable intent. Tribalism is manifested in a number of other ways than this extreme happening. For example, those administrators who have ever been presented with a grievance by militants of any stripe will testify that seldom has such a grievance been presented on a one-to-one basis. On the contrary, the typical procedure is for the administrator, be he white or black, to be confronted by a ratio of at least ten to one. For even those of us who have been through such an experience a number of times, it is never felt that the psychological advantage is equally balanced between the respective parties. From the militants' perspective, such intimidating tactics seem wise because they frequently get quick results. However, I am convinced that results attained under such pressure seldom are in anyone's long-range best interests. Hurried results, achieved under duress, often exacerbate the underlying issues of the grievance itself. This is because the aggrievers are "bought off" so as to prevent further bother rather than to take the trouble to effect a permanent solution. Later, a much larger "bad faith" explosion often occurs.

The three-way struggle for black student allegiance and power at Prairie State in 1970 was over the question of who was to be the faculty sponsor of the Black Students' Union. The BSU represented an officially recognized entity on campus. It therefore represented institutionalized and legitimatized political power. The tactics used by the three black male faculty members to become the sponsor of the BSU were not always "nice" as I soon learned.

Black students were told by one of the contenders in the power struggle, "You can't talk black by day, but sleep white at night." This was an obvious reference to the white spouses of the two other contenders for black student support. Of course, this individual did not mention the fact to the same black students that his girl friend was a white nurse.

One of the other contenders for the BSU sponsorship later stormed into my office demanding that one of the other contenders be fired for allegedly corrupting the morals of some black male students. He claimed that this opponent's white wife allegedly permitted black students to "fondle" here with his opponent's blessing!

Still another contender accused one of his opponents of being bi-sexual and having as much interest in some of the male students as in women.

In short, sex was used as the main weapon in the fierce infighting that occurred in the internecine struggle for power. It was an ugly situation that served no one well.

To complicate the power struggle further, was the problem of Calvin Savage, the Director of Financial Aids. Savage had been rejected as Director of the Black Studies

Program by the black students, "Conductor" Jackson, and Jackson's vocal followers as being an "Oreo" (black on the outside, but white on the inside). Nevertheless, the Administration felt at the time that Savage's positive qualities were such that it wished to employ him in another position. Because Savage held the purse strings to student financial aid, this fact alone gave him immense power. It also made him a ready target for both black students who had originally opposed him for the Black Studies directorship and now by the three BSU sponsor contenders. Two contenders curried favor with certain black students by demanding Savage's resignation or dismissal. The two contenders claimed Savage was "insensitive" to black students' needs, that he was not being a "brother." To further complicate what was fast becoming an explosive situation, Trustee Jackson arranged for several meetings to be held on campus which were concerned with student financial aid. None of these meetings was authorized by the Board and the Administration had no advance knowledge of any of them. At these meetings, demands were made of Savage to become a "soul brother," to "do right" by the black students. Plainly put, Savage was asked to provide financial aid to black students whether they met federal guidelines or not.

Before the BSU finally settled on a sponsor, demands had been made by various individuals and groups for the resignation or dismissal of three of the four black faculty members involved. Two secretaries resigned and one was dismissed in the turmoil that was occurring over the development of the Black Studies Program. One of the contestants for the BSU sponsorship was transferred out of the Black Studies Program, and another BSU sponsorship contender remaining a PSC faculty member was thrown into jeopardy by actions to be later discussed.

What each contender eventually learned, but only after much "spilled blood," was that *each* could depend upon black student support for political strength, if and when needed. It didn't matter who was the BSU sponsor.

The internecine warfare that occurred several months running in the Spring of 1970 also had a negative spillover effect on me. Each of the four black professional staff members during this period insisted that I take drastic action against the others. My refusal to ask for resignations or to initiate dismissal actions (for which there were no real grounds at the time for any of them) resulted in two of the four individuals taking covert and overt action against me. My inaction in these affairs (though inaction *was* the decision I chose to make) was not the sole nor even the main reason for such action taken against me. But it was one of several cumulative events that eventuated into an "explosion."

The black movement of the 1960's and 1970's is one which is both understandable and admirable. It was a movement that sought justice, dignity, economic opportunity, and the benefits of full citizenship in our country. Certainly, I completely supported these aims. The black movement, out of necessity when one's group is in the minority, has also demonstrated something else. It has clearly confirmed the long established sociological principle that a highly disciplined, tight-knit, dedicated minority, when working closely together for a specific end, can often attain results far out of proportion to their actual numerical strength. Dedication, tenacity, and zeal by a well-disciplined few, working in tandem, can produce enormous political capital. This proved true in the birth of the Black Studies Program and proved true other times at Prairie State College in the disordered Spring of 1970.

# Chapter 6

# The Store Front Academy

In order to gain a better perspective of the problems facing minority students, off as well as on campus, I decided to employ a needy student as a "consultant." I invited Louis Dowell, one of the older black students and a Korean War veteran, and who was well regarded by other students to serve in this capacity. He agreed after I told him what I was after.

"Louis," I said, "I want to try to gain a better understanding of the problems facing black and other minority students at our College. I'd like to employ you on a consultant basis. I'd like to have weekly reports of realistic programs that could meaningfully aid our minority students....Talk to the students and talk to people in the community....You will have a standing appointment with me at 2:00 P.M. with me every Monday."

After several Mondays had passed, with some fruitful discussions, I said, "Louis, today I'd like to have us go in my car over to the east side....Point out things to me as if you were a sociologist—about the living situation of the students—what life is like out on the streets."

We drove from an all white community to a near all black (and some brown) community in less than ten minutes and less than five miles from the College.

"See that place, Doctor Hostrop. That's a liquor store …and look down the same block....Too many liquor stores for people who are too poor. They drink to forget their misery. When you go into a black community, all you see are churches and liquor stores....In either case, the people are escaping …dulling their senses. There's not enough work and others have made welfare a way of life. Their mamas before them were on welfare....That's all they know is welfare."

"What about dope," I asked.

"Too much of it. Most of the stuff used is marijuana, though. Heroin is too expensive. Some use it but it's mostly pot and pills."

"What about housing?"

"See that house?"

"Yes. It certainly is small."

"Well, I know the people who live there. There's a mother and six kids. Because the house is so small there are only two beds. The four smaller children sleep in one bed —crosswise…not lengthwise…and the two older girls and the mother sleep together in the other bed....They're on welfare. How they continue to be good, decent people I don't know. The mother takes in ironings but with so many young children she can't leave the house."

"What about the father?"

"He was a decent man. They was married. He was the father of all the children. He was a painter. Last year he fell from a scaffold and suffered a broken neck and internal injuries. He died a slow and painful death....He lasted almost three months after the fall."

"What about insurance and other benefits?"

"There wasn't much. It wasn't a company job. He couldn't get into the Union. He had little protection or help. He got a little, I believe. But with six hungry kids it didn't last long."

"That's a sad story," I said…"and I know my words are an understatement. Are there many such tragic situations?"

"What happened to the painter's family has hundreds of versions similar to it in the black ghettos....Survival is what black people are worried about....We don't spend much time worrying about getting a fancy house or taking a vacation or ever eating out in a really nice restaurant....On the street…in the ghetto…what we worry about is getting through today so we can live to get through the next day. And so on....'Survival' is a very important word for black folks, Doctor Hostrop."

"That's why it's so important for young blacks to get an education and raise themselves out of the vicious cycle so many find themselves in, Louis."

"Yes, but that's not the whole thing," Louis said." The racist institutions in America have to change, too....Young blacks aren't patient like their parents were....If changes don't come faster than they have, there's going to be big trouble in this country....Young blacks aren't afraid to die—because they already feel dead in the traps of American ghettos."

"I hope these changes come fast enough, Louis....It is my earnest hope that we can move fast enough to realize the legitimate aspirations of our country's blacks, Chicanos, Indians—and others of the poor and oppressed."

We continued with our slow drive through the ghetto of East Chicago Heights. Stories of hunger, unemployment, crime, despair and gouging landlords were repeated over and over again by the younger man.

"Louis, one of the things we have talked the most about during these Monday meetings we've been having together is a need for a 'storefront academy.' Today confirms our discussions more than a dozen more such discussions on the subject. I know you've been looking over possible places for such an academy. But I have an idea as long as we are in the area…something I hadn't thought of as a possibility before. Let's drive over to the Jones Memorial Center. It's just about a quarter of a mile from here. Reverend Hastings, whom I've known for some time and for whom I have a lot of respect, might have an idea on the subject that could help us move this project along more quickly than otherwise would be possible.... What do you think?"

"That sounds like a good idea. I know Reverend Hastings, too; he's a fine man. It sure won't hurt to talk to him."

I turned at the next corner and drove straight down the street for five blocks where the Jones Memorial Center sat on a corner. The center serves as a youth recreation center for pre-college age students. Boy Scout and Girl Scout meetings are held there. Various games can be checked out. There is a gym. There also is a day care center.

The director greeted us: "What can I do for you gentlemen?"

"Reverend Hastings," I began, "Louis and I have been talking for some time as to how the College can be made more relevant in meeting the needs of its black students....One of the problems facing not only black students, but others living on the east side, is a place to study at night, a place to discuss problems of mutual concern, a place to do tutoring for both college-age and school-age children, a place to disseminate information on the College's offerings—particularly its technical/vocational offerings and a place to hold occasional socials such as dances. Both of us want it to be a dignified place, well-supervised, and of high purpose. The name we have given to such a center is 'Storefront Academy'....We hope you can give us an idea as to where we might find such a place on the east side....We want it on the east side because we want it to be as convenient for our students as possible since transportation is a problem for many of our students."

Reverend Hastings replied with enthusiasm, "That's a really splendid idea. How many days a week would you need such a place, do you believe?"

I turned to Louis.

"I think three days a week would work out real good," he said.

"What would be the best days—a day in the middle of the week and Fridays and Saturdays?" I offered.

"No," Louis said laughing. "The students won't come on Fridays and Saturdays—they'll want to go to a movie, a pool hall, a dance at the College, or just rap while cruising in a car...I think the best days would be Tuesday, Wednesday and Thursday—those are good study nights. In that way, the students can have a place outside their crowded, noisy houses—you can't get no studying done noways in most houses ....What the Academy has to do mainly is to provide a quiet place for studying and a place where the brothers and sisters can help one another when they get stuck."

"I've been thinking, as you talked, Louis," Reverend Hastings said, "that we have such a place right here in the Center if you don't mind moving some furniture each time you wanted to use it. Let's go downstairs....I'll show you what I have in mind."

The three of us walked through the gym where nearly a hundred youngsters were playing basketball, backgammon, checkers and monopoly. Others were drawing and painting. Reverend Hastings led the way down a short flight of stairs and then said:

"This large room is used as a day care center during the day, but it's not in use after 4:00 P.M. You will note over in the corner there are large fold-up tables that can be set up after four as study tables after the children's furniture is set aside. If you put the children's furniture back as you found it each day, and cleaned up afterwards, I'll let the college students use it at no cost....What you are trying to do is a real self-help project and deserves to be encouraged."

"That's more than generous of you, Reverend Hastings," I said. "But we didn't expect anything this generous. We thought perhaps you would know of some other place out in the community....We don't want to impose on you."

"On the contrary. It's no imposition. It would be an honor to help in such an effort. We'll even go so far as to employ Louis here as Program Director under Your College work-study program—Louis has worked for us before. I know what a fine, conscientious job he does."

"I'm flabbergasted!" I exclaimed. "What do you think, Louis?"

"It sounds great to me. This would really work out fine."

"Well, then, what I'd like to do, Louis, is to work out all the details with the Reverend and Vice-President Jones tomorrow. You see Dr. Jones day after tomorrow. From now on you will work with Dr. Jones and Reverend Hastings here to make this program the kind of success that we all want it to be."

"Come in to see me at four, Louis," Reverend Hastings said. "I'll give you a key and we'll discuss what you need in detail."

"Fine. I'll be here tomorrow at four...and I'll see Dr. Jones on Friday."

Good-byes were said and the new Director of the Storefront Academy and I returned to the College.

The following day I discussed the Storefront Academy at length with Dr. Jones and turned over the direction and supervision of the culmination of the past four months of discussions with Louis to him. Reverend Hastings and Dr. Jones had an equally extensive discussion the same day about the Academy. The next day the Vice-President of Student Services and the Storefront Academy Director worked out guidelines and goals together which the Academy was hopefully to achieve.

I had a good feeling—I felt that my personal interest and efforts had achieved an important, positive, and concrete result that would make the College more relevant to its black students in particular. It did...while it lasted. But as the reader will learn in Chapter 9, the attitude of the Board was, in my view, racist. The Board all but destroyed my delicately cultivated personal effort of four months duration. The establishment of the Storefront Academy was also one of the chief reasons given by the Board for my dismissal three months later.

# Chapter 7

# Kent State/Jackson State

In early May of 1970 the Kent State University tragedy occurred in which several students were killed and an even larger number were wounded by the Ohio State National Guardsmen. The Guardsmen claimed that they felt their lives were threatened by rock-throwing students there. The OSNG was called upon by campus administrators because of out-of-control, large-scale protests by students over the war in Vietnam. The killing of American students on campus caused a revulsion among students on nearly every campus across the land. This revulsion was no less felt at Prairie State.

The Student Mobilization Committee (SMC) and the Student League for Understanding (SLU) were able to galvanize a number of students over the Kent State "massacre" as the killings were referred to. These two ad hoc student groups at Prairie State pleaded with their instructors to cancel classes. In their place they asked that memorial services be held in memory of the slain students, and as a means of protesting the war in Southeast Asia.

William Patton, President of the Faculty Senate, called a special meeting of the Senate for the purpose of discussing the students' request. A heated debate took place at the meeting which resulted in a narrow victory by those who favored cancelling all classes and those who argued that the highest honor that could be bestowed to those slain students would be to provide an uninterrupted education.

Immediately after the meeting, the Senate sent four resolutions to me. They were: 1) to cancel classes on Friday to honor the slain students at Kent State, 2) to ask the College President to join his counterparts in writing a letter to the President of the United States to protest the use of armed National Guardsmen on campuses, 3) to write a letter of sympathy to the parents of the deceased, and 4) to lower the flag to half-mast for one week in memoriam to the slain students.

I noted what the voting division had been on each issue. With the exception of the resolution to cancel Friday classes, the other three resolutions passed by overwhelming majorities. As a result of considering the expression of the Senate and my own concerns, I called my secretary into my office and dictated a memorandum to be duplicated and placed in the mail box of every staff member. The memorandum declared that I would write a letter to the President of the United States protesting armed guards on college campuses; would write a letter of sympathy on behalf of the College to the families of students who had been slain at Kent State; and would lower the flag to half-mast for a week....But I also wrote that I would *not* cancel classes on Friday:

> The College will remain open on Friday. Those faculty and students who wish to teach and learn in the usual way will be permitted to do so. Those faculty and students who wish to attend planned activities on Friday may do so. Faculty members will be expected to accompany their classes if the latter option is chosen...."

Hardly before the ink was dry on the paper Professors Patton and Lindstrand marched into my office protesting the memo just placed in the mail boxes. Lindstrand exclaimed in an angry voice: "The faculty voted to cancel classes on Friday....It doesn't matter if the resolution carried by two votes or sixty-two votes—the fact remains you are defying the will of the faculty. The resolution passed by the faculty comes from the Senate as a corporate body....You are overruling the entire Senate....We ask you to reconsider and withdraw your memo!"

"Mr. Lindstrand," I replied, "No one is being deprived of anything....If you choose to accompany your class to events being planned and scheduled by some of the students on Friday, you are free to do so. But you can't tell me that I'm supposed to *require* those students and faculty to cancel classes who would consider it a dishonor to the slain students and unfair to their own students *not* to hold classes."

"But we voted," Patton insisted.

"The matter is closed, gentlemen," I said as I stood up from behind my desk.

The SMC and the SLU decided to go on strike Friday by not attending classes notwithstanding my decision—or the decision of their instructors or fellow students in the classes in which they were enrolled. Early Thursday morning the SMC and the SLU were at every entrance of the College urging every student not to attend classes on Friday, but rather to attend events which had been organized in protest of the government's policy to allow armed National Guardsmen on college and university campuses. Some student who received the leaflets were heard to remark:

"Why have we waited so long. Did we have to have this tragedy to shake us up?"

"Where are the students going to be killed next—maybe here?"

"Sieg Heil!"

"Those kids at Kent State got what they deserved."

"I've come to college to learn, not to demonstrate."

On Friday, the student strike was about 50 percent effective...a direct reflection of the stand taken by their individual instructors.

The decisions I had to make with respect to the emotionally laden Kent State tragedy, and a short time later the Jackson State tragedy in which state troopers killed several students, resulted in my loss of considerable student and faculty support. Because the opinions as to what to do by students and faculty were nearly evenly divided, it was a no win proposition for me. Yet, it could not be otherwise. The situations demanded that decisions be made.

The tragedies of Kent State and Jackson State are particularly illustrative of how it is sometimes impossible for a chief executive to not suffer a serious erosion of support, no matter how capable he or she might be. Considerable loss of support can result over a single incident. After several controversial decisions, particularly when occurring within a relatively short period of time, little support will remain for a chief executive. However, support *can* gradually be regained. But to do so requires that a chief executive have a knowledgeable and a courageous governing board, one that understands the peaks and valleys of academic administration, one that gives the chief executive the deserved support he or she needs when the right decisions are the toughest ones to make. The period of 1965-1970 particularly required exceptional administrators and boards of trustees. Probably no historical period on our nation's college and university campuses demanded so much sensitivity, courage, and leadership by so few. Many met the challenges demanded of the times of racial upheavels, the women's movement, and the most unpopular war in our nation's history. Many others did not meet the challenges of the times. This case study of Prairie State College shows that both conditions existed.

## Chapter 8

# Football Comes to Prairie State College

In contrast to such student concerns as women's rights, the killings at Kent State and Jackson State, the Bomb, the Vietnam War, environmental pollution, population explosion, drugs, the Washington Administration, racism, the generation gap, secular humanism...and a host of other student concerns, football became a lively topic on campus.

Anthony Hannigan, seated along with Trustee Griffith in April, requested that I put on the agenda for the first Board meeting in May, "Introduction of Football Effective in the Fall." The new Board member said, "This will really bring the students together. We need a football team."

Hannigan was going to have a son at the College in the fall. Junior wanted to play football and his dad wanted to watch his son play.

Prior to the Board meeting, Hannigan visited with former high school football players, coaches, the PSC Athletic Director, and me. Local businessmen were also visited. When I asked where the money was going to come from to field a football team, pointing out that the College had suffered three straight tax referenda defeats, Hannigan replied, "Businessmen and game receipts."

As others and I watched Hannigan's perform at the Board meeting, we all had to acknowledge that he was an infectious salesman, if nothing else.

"Football can pay its own way," Hannigan declared to fellow Board members. "It will prove to be a unifying force for the student body and a public relations tool for the College."

With Trustee Hannigan was a 230 pound freshman who stated to the Board, "The students want football. I've talked to a lot of fellows. I think the squad could attract forty or more players."

The College's Athletic Director, however, gave only lukewarm support to the proposal. "There would be difficulties in lining up a schedule of four games this fall. But the following year we could easily field a team and do it right both with respect to a schedule and the proper training and conditioning of the boys."

"What about money to support a football team?" Doris Hill, the Board Vice-Chairman asked?

"That will be no problem," Hannigan said, with confidence radiating from his face. "I've talked to businessmen and the Student Senate. Here's what we do....The Student Senate has already pledged two-thousand dollars. Another two thousand dollars could be expected from the net profits of program advertising....This would be topped off by three thousand, six-hundred dollars in ticket sales....At least another five hundred dollars could be expected from concessions and twice that amount from program sales...."

Hannigan was interrupted by the Vice-Chairman, "I believe you have overestimated your revenues and underestimated your expenses....The team would lack such vital training equipment as a sled, practice dummies, and personal equipment...."

After 75 minutes of discussion, Board Chairman Kloss asked for a motion. The matter was tabled until the next Board meeting so that various questions that had been raised could be more fully researched and reported back to the Board.

Hannigan was furious at the Athletic Director in particular. Hannigan told me, "That Athletic Director of yours better look out....He's on my list and we might just have to find ourselves another one....Next year, my foot! We're going to have football *this* fall!"

Added to the woes of the football-minded Hannigan was an editorial by the Sports Editor of the *STAR*. He wrote that he shared PSC Vice-Chairman's concern that Hannigan had not only overestimated the income derived by football but had likewise overestimated the interest in football by the students. This prediction proved correct.

At the next Board meeting the Trustees voted to consider the introduction of football the year following rather than the forthcoming year by a vote of six to one.

The testimony by the Atlhetic Director was decisive. He testified that of the 12 area colleges contacted only two could schedule the College for football the Fall of 1970. He also said: "A number of community college coaches I talked to cautioned against a poor start. Some of them said that their own programs had been crippled because they didn't go 'all out' the first year."

The Administration and the Athletic Director, as well as the majority of the Trustees and the faculty, gave a sigh of relief to dispatching the question of a football program to another time. It was evident that if it were a Board approved activity, the Board would have to come up with at least $5,000 to subsidize all that was needed on top of what the football enthusiast Board member claimed he could come up with. Some students were disappointed. Hannigan was bitter and angry. He wanted to see his son play football. Hannigan's dislike for the Athletic Director intensified...and some of this feeling spilled over on to me. He was angry that I would not support his premature venture.

During the next two weeks, the feisty football enthusiast met with the Student Senate President and one of the PSC coaches in a planned action to discredit the Athletic Director and to still install football in the Fall.

Without informing anyone, except the Board Chairman, Hannigan was successful in calling an executive session to hear trumped-up charges by the Student Senate President against the Athletic Director who only by chance happened to be at the next Board meeting himself.

I protested to Chairman Kloss that the matter of charges against the Athletic Director had never been duly processed through administrative channels and that an executive session should not be held until this first step had been taken.

In response to my plea, Kloss said, "The Board is supposed to act as a court of last appeal on all matters brought to it by any member of the College community."

"But the Student Senate President hasn't even taken the first step....He hasn't seen anyone!" I insisted.

"Well...he's here. We'll let him speak. We can always send the problem back through channels."

I insisted that my key administrative staff be present as well as the Athletic Director during the executive session.

The Student Senate President was asked to proceed by Chairman Kloss. He began by passing out a memorandum that contained nine questions that he said he wanted the Athletic Director to answer before the Board of Trustees.

I asked the Vice-President of Student Services and the Athletic Director if they cared to respond after I declared to the Trustees, "I do not feel that I can make a response to the Board on a document which I have just now received without adequate research."

To my surprise, the Athletic Director stated, "I'd like to respond now."

With this, Hannigan asked the Student Senate President to state the dissatisfactions with the Athletic Department.

"One student told me he was dissatisfied because Prairie State did not offer football, so he went to another college."

"What else," Hannigan asked.

"Well, I've heard some students say Prairie State isn't offering as good an athletic program as the high schools in the area."

"What about Student Funds for athletics," Board member Hannigan next asked.

"We're not going to give any funds to the athletic department this year for intramurals."

"How much was given last year?" Board Chairman Kloss asked.

"Three thousand dollars."

"Why won't you give them money next year?" Board Secretary Shirley Mellecker asked.

"Like I told you....The students are dissatisfied with the program developed by the Athletic Director....He don't consult with anyone....It's incomplete....The students want football ....and he stands in the way....We would give three thousand dollars for football....We need to have a rounded program."

The Athletic Director asked permission to respond. "I can't understand why the students wouldn't want to support both the intramural and the entire athletic program....I don't understand why they would support only one specific program ....I'm very disappointed....No one on the staff has pushed football as I have....We'll probably have football the following Fall...now we have the chance and the time to do a really good planning job...I am very disappointed if a large segment of the students really feel this way."

The executive session was concluded when Vice-President Jones said, "I'd like to have the whole situation given back to me to work through since both students and athletics are under my jurisdiction."

It was patently evident that the Student Senate President had been "used" by Hannigan. It was also equally evident that an overambitious coach had unethically prepared the innocuous questions listed on the memorandum read by the Student Senate President. Board member Hannigan and the unethical PSC coach were viewed as unscrupulous, and the Student Senate President as naive by the Administration. But they did not care because they and Hannigan were busy preparing a victory surprise to spring on the Administration...and the Board at the next Board meeting.

At the following Board meeting, Hannigan announced to the Board that he had formed a football *club,* that he had hired a coach (the coach that had worked against his Athletic Director), that the Student Senate would fund the club in the amount of $3,000, and that the Board would have no responsibility for the program. The administrators sat in shocked disbelief; not only at the surprise announcement by Hannigan that football had been reintroduced under another guise, but by the ready acceptance by all members of the Board. It was obvious that this ready acceptance had been prearranged in violation of Board policies and state law regarding open meetings.

Hannigan jubilantly reported to the Board, "We'll get the program in full swing and it will keep building as we go along....There's a great amount of talent in this area and there's no reason we can't hold our own with anyone right now...."

That Fall, Prairie State lost all eight of its catch as catch can games...including a loss to the national community college football champions by a score of 58 to 0. But no matter, Hannigan *did* get to see his son play. As predicted, never more than several hundred spectators ever watched a game. Worse still, there were far too many serious player injuries that occurred. Prairie fielded a team that was unskillfully coached, underprepared, and overmatched. Once again, Prairie State College provides another valuable lesson. That lesson is that overzealousness and salesmanship should not be permitted to blind decision makers to the true consequences of their decisions. Consequences must be *carefully* considered *before* decisions are made. Planning must replace reacting. Policy makers cannot allow themselves to slide over the thin line between policy making and administration.

## Chapter 9

# From Policy Making to Administration

The events surrounding the introduction of football at the College was the first major evidence of a dramatic shift by the Board from their proper role as policy makers to improperly involving themselves in the administrative affairs of the College. The by-passing of the Athletic Director, the Vice-President of Student Services, and myself by Hannigan, as improper as it was, was not as alarming to me as was the resigned acceptance of the ploy by the Board. The other Board members' acceptance of this maneuver was a clear warning that they, too, could be expected to leap in with both feet into pet projects of their own. I can see it now, I mused as I sat in my office at home, they'll each carve out their own little kingdoms via committees—or otherwise—and there'll be tacit agreements of support for one another's favorite interests when it's time for voting at Board meetings....There are going to be trying times ahead.

My concerns were increasingly borne out. Hardly a day passed that I didn't wish that Dr. Dale Collins, the former

Board Chairman, was still seated. He knew the difference between policy making and administration. Dr. Collins insisted that the Board operate as a Committee of the Whole. He resisted efforts of the two women Board members, Doris Hill and Shirley Mellecker, to break up into a number of sub-committees that would tempt Board members to administer rather than to govern. Each time Hill and Mellecker attempted to move the Board in this direction he forcefully pointed out that a committee structure had the effect of isolating Board members from one another in acting on important decisions. Chairman Collins rightfully pointed out that there was a greater chance of rubber stamping the recommendations of each other's committees than to rubber stamp the administration when everyone present had heard *all* the arguments before taking a vote.

Upon Dr. Collin's retirement, the pressure for forming the Board into committees considerably increased. The tactic used to bring the matter of committees onto the table once again was a criticism leveled at me at the previous Board meeting. I had been told that Board meetings were lasting too long and that I should find ways to expedite the meetings. Griffith led the attack that was introduced by Hill and Mellecker. I responded to the charge in my regular confidential memo preceding each Board meeting. For the May 7, 1970 Board meeting, I wrote:

> Further steps by your administrative staff are being taken to facilitate Board meetings. Hopefully, continual attention to this problem by the staff will aid in terminating meeting in an expeditious time. Obviously, though, the length of meetings is a two-way process—what the staff presents and how the Board responds. The staff has control of only one half of the process. Specifically, members of the Board could expedite meetings considerably if questions on the Board agenda which any Board member has could be communicated to me prior to the Board meeting for an answer....

I knew straight off that the May 7, 1970 meeting was going to be a difficult one. Before the meeting began, Griffith cornered me and said, "I don't agree with you at all with what you wrote about expediting Board meetings. Board members should ask their questions at Board meetings....As a public body we have to let our processes show."

"Even for routine information?" I asked of the inexperienced Board member. "If you are interested in receiving well-researched answers to your questions, then you must let the Administration know in advance what those questions are. It's well and good to let the processes show, but when they do it's going to look much better to the public if your Administration provides well-prepared answers rather than poorly prepared ones or no answers at all."

Griffith's answer was a sneering lip as he took his place at the Board table.

Items on the agenda moved smoothly until the last one. Just when I thought the meeting was going to end reasonably well after all, and at a reasonable hour, Vice-Chairman\ Hill let go: "Doctor Hostrop, what's this about a 'Store Front Academy?'...I understand you have made a contract with the Jones Memorial Center....Is this true?"

Before I could answer, Board Chairman Kloss asked with disbelief in his voice, "There is no truth to the rumor, is there Doctor Hostrop?"

"As a matter of fact...yes."

"But this program has never been brought before the Board," Kloss declared. "What's this all about?"

I began to speak. As I did, pencils were poised by the three newspaper reporters present. Faculty union representatives sitting in the audience also seemed to sense that for the first time since I had been hired I was going to be publicly blistered by the Board. They sat almost hypnotized, totally fascinated, as they watched in rapt attention....

"For some months now I have attempted to better understand the needs of our students who reside on the east side of our district.... As a consequence, I employed Louis Dowell, a

Korean veteran student, to assist me in this process as…as a…"

"Doctor Hostrop! Where did the money come from to pay Mr. Dowell?" Vice-Chairman Hill interrupted.

"From contractual services within the budget of the President's office....Since the amount expended was less than five hundred dollars, which is an expenditure amount that Board policy does not require an advance approval, I did not consider it necessary to bring it to the attention of the Board."

"But Doctor Hostrop, this was a *new* program!...The Board is supposed to approve *all* new programs. You didn't get our approval!" Trustee Mellecker stated.

"On the contrary, the Board already has approved the federal college work-study program and this program is a part of that."

"It's a new program....You can't get away from that fact," Board Chairman Kloss insisted.

"We have numerous work-study arrangements with off-campus agencies," I said with mouth and lips bone dry. "We've had tutors in Elementary School Districts 169 and 170....We've had Helpers at the Mental Health Clinic…in the park districts …the YMCA…and a host of other places....These programs weren't first brought to the Board for approval."

"Yes, but those programs were not sponsored by Prairie State College as this one is!" Vice-Chairman Hill triumphantly said.

"I do not agree. The agency…in this case the Jones Memorial Center…is paying twenty percent of the costs and the federal government is paying the other eighty percent....Prairie State College isn't paying a dime for the program except for getting it launched."

What about Louis Dowell?…You've already admitted that you've used College funds to pay him!" Board Chairman Kloss screeched.

"His salary has been the only cost to the College. And the amount spent was within the budget and limits set without requiring advance Board approval."

"We are all surprised....Here you begin something that no one knew about....I can tell you Doctor Hostrop, the Board isn't happy about this at all," Chairman Kloss stated.

"I had the best inten..."

"You should have brought it to us first!" Vice-Chairman Hill again insisted in interrupting me again.

Trustee Thomas Porter then said quietly, "I would hope that the Board wouldn't by its action discourage 'risk taking' by Doctor Hostrop....There are times when he may feel a need to take a risk."

"That's...."

And for a third time I was interrupted. Chairman Kloss said, "No one is trying to prevent risk taking....All we want is to know in advance what you're thinking!"

"I wish that you would try to understand my point of view on this....I never thought of this program as being particularly any more or less significant than a dozen other programs I have already mentioned."

"Well it is...even if you refuse to see it," Chairman Kloss concluded.

I found it necessary to gather together all my inner resources to keep from losing my temper and resigning on the spot. As I started to walk to my car at the end of the meeting, Griffith once more came up to me...."You're going to have to prove yourself to me....It's going to take a long time before I have any confidence in your administrative abilities....One of the first things you learn in a beginning management course is to never surprise your superiors."

Before I could reply, my lone Board member supporter on this issue, Thomas Porter, who was standing nearby and had overheard the remark noted, "Yes, but another basic principle you learn in a first-year management course is that you never publicly reprimand a subordinate."

I stated, "If there was any question on the Storefront Academy, I should have been asked about it privately or we should have gone into executive session to discuss it....If there was cause for a reprimand, which I insist there wasn't, it should have been done by the Chairman alone....What has happened will undermine my authority with the faculty and will create a very poor image for the entire College as a result of what will come out in the newspapers....This matter could also result in backlash…for there is no question that the appearance of the discussion suggests unhealthy racist overtones."

Before I was half finished with my remarks, Griffith left me standing talking only to Trustee Porter. When I had finished talking to Porter, and strode over to my car, I found Richard Jensen, my Administrative Assistant, waiting. He simply said, "What did they want of you tonight…blood!...I've never seen such sadistic behavior on the part of so-called civilized and responsible human beings."

When I reached home my wife was waiting for me with a glass of cold milk and a saucer full of my favorite oatmeal cookies. She waited for me to first speak about the meeting. I related what had happened and concluded with, "I've never been so publicly humiliated in my twenty-two years in education as tonight....I'm telling you now….so be prepared. If such viciousness ever occurs again, I'm going to resign on the spot....I couldn't respect myself otherwise....I'm staying now for the good of the College during its painful growing stage....But when my contract ends in two years, that's it unless a dramatic change takes place on the Board."

# Chapter 10

# The Union Flexes Its Political Muscle

When "Items from the Floor" at the May 21, 1970 Board meeting were reached, my nemesis, Raymond Lindstrand rose to be recognized.

"Yes, Professor Lindstrand?" Board Chairman Kloss said in recognition.

"I am pleased to have this public opportunity to read a commendation on behalf of the Faculty Senate and the Prairie State College Chapter of the Cook County College Teachers' Union."

"Please go ahead," the Board Chairman said.

"We thank Ashley Johnson for the excellent job he has done as Vice-President of Instruction this past year.

"Mr. Johnson combines well the elements that constitute a competent administrator. He is willing to take a positive position and defend it, yet he is not inflexible in his resolution, and he will modify his position if presented with a valid argument and positive reasoning.

"He combines administrative leadership, personal interest, sound judgment, and a friendly attitude in his dealings with the faculty.

"We commend the Board for appointing him to this position. We sincerely hope that he will be working with the faculty next year in a key position with as much or *even more responsibility*

"Thank you, Professor Lindstrand. The Board joins in your commendation," the Chairman said.

I said, "On behalf of my fellow administrators and myself I also wish to commend Mr. Johnson for an excellent job."

The Vice-President of Instructional Services then stated, "I have never received a compliment more appreciated than that extended by the Senate and the Union. I express my deep appreciation for them. I will try to live up to the all too generous remarks just read by Professor Lindstrand....Thank you most sincerely."

When all had quieted down, and before the warm glow had fully cooled, the powerful faculty leader asked to be recognized again.

"Yes, Professor Lindstrand?"

"The faculty is deeply concerned over the lack of progress in nineteen negotiating sessions. All that these meetings have produced is a preamble, a calendar, and little else.

There's been no good faith bargaining on such questions as faculty overload, summer school compensation, fringe benefits, and a salary offer.

"We can't reasonably enter into negotiations if we are not going to get meaningful proposals.

"The Administration negotiating team has offered nothing but the 'status quo' on the compensation question.

"The faculty is getting alarmed....Nineteen sessions of two hours each represents a lot of time invested with no results.

"The Board's chief negotiator has insisted that he will not make a salary offer until all other items have been negotiated.

"We want to do everything possible to avoid another strike....But the Board's complete inflexibility in its manner of negotiations leaves us with little other alternative.

"We will report to the Union membership after Monday's meeting with the Administration team...At the Union meeting we will ask for specific strike instructions if the Board refuses to make an offer of substantial improvement in the areas of salary, fringe benefits, work load, class size, and grievance procedures."

In the Board executive session that followed, my Administrative Asssistant, Richard Jensen, who was also the Board's Chief Negotiator, reported on progress being made from the Administration's point of view. New instructions and authorizations were also asked of the Board.

The following Monday at a noontime meeting, the Union rank and file members authorized their leaders to call a strike if in the opinion of their leaders negotiations were not progressing as they should. Thus Lindstrand had put into motion two vehicles, which were designed to expedite my removal as President. The first vehicle was the commendation initiated and read by Lindstrand. He had clearly and publicly expressed the hope that the Board would place Johnson "...in a key position ...with more responsibility." The only position of greater responsibility at the College than that of Vice-President of Instructional Services was that of *President*. In short, Lindstrand had made it plain that both the Senate and the Union preferred Johnson, an old Bloomite (so named for those who had once been on the staff of Bloom High School in Chicago Heights), over me as President. The second removal from office vehicle was to call a strike. A strike could be used to rally faculty support against me in the emotionally charged atmosphere which always comes with a strike. A CEO, above all others, serves as the lightning rod for the bitterness and frustration that comes from a strike. Indeed, this conjecture was proven correct as will be shown in subsequent events.

# Chapter 11

# A Non-Reemployment Recommendation

On Monday, following the previous Board meeting, I had a meeting initiated by the Vice-President of Student Services, Richard Jones.

"What can I do for you, Dick?"

"It's about Calvin Savage....He's improved some, but he still makes a number of mistakes…and some of them I believe are deliberate ones to harass those students he doesn't like....He hasn't forgotten or forgiven the students who tried to get him 'fired' at the beginning of the year."

"I haven't heard nearly as many complaints about him as I did a couple of months ago."

"That may be....As I said, he has improved…but not enough…I don't feel I can recommend him beyond the end of his contract period....I think we were right not to give in to the student demands....We can't have them telling us who we're going to hire and who we're going to let go....But I do honestly believe if we mean what we say, that the welfare of the institution must come before the welfare of the individual, then I must recommend to you that he not be offered a new contract."

"Does Savage know what your recommendation is?"

"Yes."

"I really hate to see this, Dick....You say he has improved. He's had less than a year with us....I do certainly agree that the College must come before the individual...but at the same time you have admitted yourself that he's a hard worker...that he goes over well on college nights at the high schools...that he relates well to older students. His problem seems to be chiefly with the younger students."

"He's still making errors...deliberate ones in some instances, I believe, and in other instances just plain careless errors."

"I can't argue with that. Certainly, those errors attributed to motives rooted in the desire for revenge are inexcusable and such harassment cannot be allowed to continue....As for the careless ones, that's not good either. But on the other hand, we do have to take into consideration that this *is* his first year....We also must realize that he's our only black administrator....We must acknowledge that he is improving....And we must acknowledge that he has positive strengths in his job and has excellent relationships with other administrators. I'd hate to see him go."

"Are you saying you want me to keep him?"

"No, not if you remain adamant. I'm only asking that you once more carefully balance all factors and see if it wouldn't be in the best interests of the institution to give him one more year to either prove or disprove himself."

"I *have* thought over what you are suggesting...for many days now....That's why I'm here this afternoon....My recommendation stands. If you want to reverse the recommendation, that is for you to decide....But I am firm in my resolve not to recommend him beyond this current year even though I personally like him."

"What would you think about trying to work out something for Calvin in some other area of the College?"

"That would be fine...so long as he's not involved directly with the eighteen to twenty year old students. I think he might work out...but in his job as Financial Aids Officer, it's the younger age group he chiefly works with."

"I'll back you up insofar as financial aids is concerned. I do, though, want to think his situation through. Perhaps there is an area within the College where his strengths can be capitalized on. I want to see what I can do."

"That will be fine with me."

During the next two days I concentrated on the problem resulting from the Vice-President of Student Services' recommendation of Calvin Savage's contract. I finally hit on what I thought was a logical solution, after talking to Ashley Johnson.

The Vice-President of Instruction informed me that the Assistant Dean of Continuing Education had submitted his resignation. This resignation created an opening that seemed a natural to me since the position called for developing and administering educational programs which essentially would involve only adults.

I discussed with Ashley Johnson Calvin Savage's situation and suggested that Savage might work out exceedingly well in the Continuing Education Program.

"I'd like to talk to Dick Jones first before making any commitment," Johnson said.

"That will be fine. But please do so right away. Savage is up in the air right now. I'd like to settle the matter soon one way or the other."

However, Johnson vacillated back and forth as did the Financial Aids Director with regards to a reassignment. This resulted in my having to reluctantly bring to the Board that a new contract not be extended to the Financial Aids Director. Present in the executive session with the Board was both the Vice-President of Student Services and the Vice-President of Instructional Services.

I first reviewed the background of Savage's employment with the College, I concluded by stating that I was not recommending Savage for continuing employment.

Mr. Savage was offered a tentative reassignment to the Continuing Education Department," I began. "But he didn't show much enthusiasm for this particular area. In fact, he's been seeking other employment within and without the College. As a result, Ashley felt he would have to look elsewhere for filling the Continuing Education Assistant Deanship."

"Has Mr. Savage really done that poor a job in Financial Aids and Placement?" Vice-Chairman Hill queried.

"Yes, he has," Richard Jones replied

"What have been the problems?" Trustee Porter next asked.

Jones replied, "There have been two problem areas ....Problems of judgment; for example, not evaluating the financial needs of some students without justification."

Before Jones could continue, he was interrupted by Vice-Chairman Hill, "Why then if he has done such a poor job with financial aids was he recommended for reassignment?"

I answered, "His relationships with older students and adults out in the community have been excellent....We wanted to capitalize on these talents. The Continuing Education Department would have been the natural vehicle to do this."

Then Johnson asserted, "I personally wouldn't want someone working in Continuing Education when it would represent a fourth choice for him."

Doris Hill once more spoke, "Whoever is going to be in the financial aids area is going to have problems. Nobody likes the moneylender....And no one can be expected to go through an entire year without making errors."

"Mr. Savage's paper work has improved," Jones admitted. "He has not made as many errors since January but still there are far too many. For example, just last week he overpaid eleven students and underpaid eight others. That's too many. His errors have been too inconsistent."

Chairman Kloss rhetorically asked, with obvious displeasure in his voice, "I hope we're not getting rid of Savage to satisfy a group of black students?"

"Not at all," Jones firmly replied.

"Mr. Savage tried to put work into work study…and this is what he gets for his efforts," the Board Chairman retorted.

The Vice-Chairman then echoed the Chairman's words, "A very small group of students are out to get rid of Mr. Savage and the game has been played out with them."

Vice-President Jones informed the Financial Aids Director and Placement the day after the Board meeting that he would not have his contract extended beyond June 15th. Jones told me what had been said. Paraphrasing:

"If you want to appeal my recommendation, Cal, you may....There's nothing personal in my recommendation. You have many fine attributes. But I just can't, in good conscience, recommend you for continued employment in the financial aids and job placement area. You know why I say this. I've told you my reasons during our weekly conferences and in my written evaluation which you have. You can either appeal my recommendation to the President…or, if you prefer, you can go directly to the Board....And, of course, a letter of resignation would be an entirely acceptable alternative."

"I don't know what I'll do," Savage said, more to himself than to the Vice-President. I'll have to think about this for a few days."

As will be seen, this nonreemployment recommendation of the Director of Financial Aids and Placement led to a multitude of plagues—envy, spite, and revenge—which scattered far and wide as an epidemic.

# Chapter 12

# The Confidential Memorandum That Wasn't

The problem of Calvin Savage served as a reminder to me of the unresolved problems associated with the Black Studies Program. There had been several brief discussions about the program during the weekly meetings of the President's Cabinet. I had promised for the May 26, 1970 meeting of the Cabinet to prepare a discussion memorandum amalgamating what I believed to be the thoughts of my administrators as well as my own concerning the current status and the desired future status of the program. As promised, I distributed the memorandum in advance of the Cabinet meeting, on May 25, so that a meaningful result would likely occur out of the discussion. I wrote:

May 25, 1970

To: Cabinet

From: Richard W. Hostrop

Subject: Proposed Ethnic Studies Program for the 1970-71 Academic Year

The proposal presented is tentative and exploratory. It comes as a result of a year of observation of apparent strengths and weaknesses of the Ethnic Studies Program.

For topical discussion, it is proposed that rather than move toward an Ethnic Studies Department that relevant programs be integrated into existing academic departments. This means that Afro-American History would be taught within the History Department, Ethnic Art courses taught within the Art Department, "Black Psychology" taught within the Psychology Department, Afro-American Communications taught within the English Department, Swahili taught within the Foreign Languages Department, etc. The selection of staff to teach courses relevant to the needs of America's pluralistic society would be determined by each department. Courses taught would be subject to the same enrollment and academic standards as all other courses. Determination of all expenditures of funds for college or community events would be under the control of the Student Senate for events which the students wish to sponsor and would come out of the Student Senate's budget and for all other sponsored events, funds would be made available from tax funds and under the control, responsibility and accountability of the Department of Continuing Education. Therefore, any department would have recourse for seeking funding from either the Student Senate or from the Dean of Continuing Education.

The Director of Ethnic Studies would be responsible for serving as a resource person to the entire academic staff. He would advise how each course and department within the college could be made more relevant to the needs of all students. He would suggest content, literature sources and experiences to facilitate learning. He would suggest additional courses needed. He would serve as resource person for recommending needed staff on both a part-time and on a full-time basis, though the final determination would be made by the department. The Director would work closely with both the Student Services Division and the Continuing Education Department in seeking means of assisting minority groups to upgrade their skills so as to live a fuller and more productive life. The Director in a very real sense would serve as the "conscience" of the institution so as to foster relevance and to diminish conscious and/or unconscious racist attitudes.

The Ethnic Studies House would be transformed into a Faculty Center. Most minority students use the house very little, there have been cases of vandalism and questionable activities as well. In short, the Ethnic Studies House has not lived up to its expectations. Jones Memorial Center has allowed the college to use facilities there for studying cultural and social events and 'rapping.' Therefore, a place still could exist for some of the positive activities which have occurred at the Brick House. The Director could work closely with Jones Memorial Center to increase its relevancy.

The proposals suggested for consideration would become effective July 1.

> Please treat this position paper as very confidential. Study it and be prepared to react to it at the next Cabinet meeting.

There was a lengthy discussion of the memo by the President's Cabinet. The general consensus was *not* to attempt to integrate the program into existing curricular program for the following academic year, but rather to use the year for further evaluating the program and determining its structure for the subsequent year.

It was generally agreed that funds for community events should be consolidated in the Continuing Education office. The Black Studies Program was unique in having its own budget for such events. There also was a strong, unproven suspicion that Cooke was paying high consultant fees to certain friends who in turn were employing him as a consultant at their institutions at equally high pay.

There was general agreement that the Ethnic Studies House ('Brick House') be transformed into a Faculty Center since there had been problems of drinking of alcohol, smoking marijuana, damage to displays, and the exclusion of white students. Then, too, as I pointed out to my administrators, the students now had a Storefront Academy which was a place for students to use under strict supervision. Though it was agreed by most that it was a good idea, all realized the political realities of such a transformation. I, therefore, agreed to explore the issue directly with the Black Studies Director before any final decision was made.

The very afternoon after the Cabinet meeting, I was able to discuss with the Director some of the matters raised in the morning Cabinet session. As a result of our discussion, I further modified my own views which I intended to discuss at the subsequent Tuesday's Cabinet meeting. However, such a discussion became academic in the controversy that erupted on Wednesday, the day after the just completed Cabinet meeting.

The controversy began when the Director was given, without my knowledge or approval, a zerox copy of my confidential "Proposed Ethnic Studies Program for the Next Academic Year" memorandum, dated May 25, 1970. The date of this memorandum became very critical in my subsequent law suit against the Board of Trustees of Illinois Junior College District 515.

On Thursday, the Black Studies Director obtained permission to address members of the local chapter of the Cook County Teachers' Union who were having a strategy meeting over enforcing their negotiating demands.

"The oppressiveness of the administration is beyond belief," Director Cooke began as he waved a copy of my memorandum in the air. "What you see in my hand is a memo from our illustrious President which just happened to come into my hands yesterday....Let me read it."

When Benjamin Cooke finished reading the memorandum he declared, "The President has never been committed to the success of the Black Studies Program but rather to its failure. From the outset no provisions were made for anything approaching a reasonable budget for the program. The Black Studies Program has offered stimulating, educational and cultural events throughout the school year that have benefitted both black and white in spite of the administration's opposition and inadequate funding.

"Dr. Hostrop told me that he was going to do everything in his power to make this program a success, but that he couldn't make any promises....Is this positive leadership?

"I've been blocked in every attempt to do something positive to enhance the image and relevancy of this institution and to implement the program as outlined in the original proposal.

"Although we've had many problems, as any new program can be expected to have," Cooke argued, "many of my problems would have been resolved if I had had the opportunity to exercise the same prerogatives as other directors to staff, schedule, evaluate and make the necessary expenditures to successfully implement the program.

"I ask each of you to not let the President get away with demasculating the program....He cannot be permitted to get away with his diabolical scheme to sabotage the program!"

A resolution was prepared and presented by Professor Lindstrand which unanimously passed. It read:

> The faculty totally rejects any unilateral decision affecting departments under programs in the College and urges that the ethnic studies program be allowed to run its full two-year course before an evaluation of the program is made.

By the time the resolution reached me in the late afternoon, it had been signed on behalf of the Faculty Senate as well as the Union.

After I read the resolution, I took it over to show to Vice-President of Student Services Jones. I handed it to him, waited while he read it, and then asked, "Do you think it was the same person I'm thinking of who 'leaked' my memo to Cooke?"

Dr. Jones looked up from the memorandum and quietly answered, "Yes."

# Chapter 13

# The Union Calls A Strike

When the Board members and I arrived on campus to conduct our second Board meeting in May, in the third year of my incumbency, we were greeted by "informational pickets" numbering three score. The pickets carried signs reading, "Meaningful Negotiations Now" and "No Contract, No Work"—and other signs of a similar nature.

The faculty crowded into the Board room to hear their Union President present the two resolutions that had been agreed to by the membership that afternoon.

"The Union urges that the College's negotiating team be enlarged to include President Hostrop and the Union urges that the Board's negotiators be instructed to enter 'round-the-clock' sessions beginning Monday with standby secretarial help."

After reading the two resolutions, Union President Lindstrand announced to the Board that the Union had set a week from Friday as the deadline date for reaching a contract, without which faculty members would not work.

"The faculty does not wish to strike," Lindstrand stated, "It is very much concerned with honoring its teaching commitments to the students and the community. By deferring any strike action until after June eleventh, the faculty is making sure that no student will be prevented from completing the current term."

In the business session that followed, Vice-Chair Hill proposed that at the next Board meeting six standing Board meetings be considered. She suggested they include: Building and Capital Outlay; Financial (budget and revenues); Relationships (community, student and faculty); Policy; Program and Planning; Personnel. It was agreed by members of the Board to discuss the proposal at its next meeting.

After business items were dispensed with, the Board moved into executive session to hear a report from Dick Jensen, my Administrative Assistant and the head of the Board's negotiating team. "Well, Dick, what do you have to report?" Chair Kloss asked.

"There have been a number of items on which we have tentatively agreed. There is some disagreement on several minor items. A crucial item is class size and the selection process for Department Chairs....The Union is adamant against a 'No strike' clause. We have just now gotten into economic items. We have offered three hundred dollars across the board which is, of course, in addition to regular step increases....There has been no agreement on load."

I recommended to the Board that if an agreement was not reached by the Friday deadline set by the Union that the opening of summer school be postponed for one week. This would put pressure on the faculty, I reasoned, to settle in the fear that summer school might not be offered at all...."More than half the faculty are scheduled to teach summer school," I reported, "and they want the money."

"But what if a settlement can't be reached during the week of summer school postponement? Board Secretary Shirley Mellecker asked.

I replied, "We'll use the same plan as last year. There are two community colleges within twenty miles of Prairie State that begin their summer schools a week after the time ours has been scheduled to begin....We deliberately scheduled ours earlier than theirs for just such an eventuality as this....Our students will be put at a disadvantage only to the extent of having a greater distance to travel. But in no way will they miss any summer school session days. Naturally, none of us want to close summer school…but if the battle lines are to be drawn, it would be better to have the battle during the summer than next fall."

I was instructed by the Board to continue to apprise the two nearest community colleges of developments at Prairie State so as to be ready to absorb PSC's students into their programs should that become necessary.

Intensified negotiations began during the last week of the Spring semester. By the end of the week, the major issue of dollars for salaries was unresolved. The two sides were $150,000 apart.

"What do you want, Ray?" Dick Jensen, the Board's chief negotiator and my Administrative Assistant, demanded, "blood? The College simply can't afford to give any more. We're already alloting seventy-nine percent of all revenues for faculty salaries. This is the same as last year which is too damn much....You know that!...You know how short we've been on basic supplies this past year....Be reasonable ....The salary we're offering you is better...I repeat, better, than the three closest junior college districts…and they're wealthier than we are!"

"How do you know what you're offering is better than theirs? It doesn't look that way to us," Ray Lindstrand, the Union's chief negotiator, countered in the Friday morning negotiating session.

"I'll tell you how I know....We've placed every one of our teachers on *their* schedules. Our faculty, on average, under our proposal, will earn four-hundred dollars more than the district closest to us. You've…got…to…understand, that there just ain't no more!...You've got it all!"

"You said that last year the faculty received seventy-nine percent of the revenues and you've just got through saying that this year the faculty is again being offered seventy-nine percent of the revenues for next year....Well that isn't good enough.... That's not making any movement!"

"But," Jensen exploded, I've already told you that you are getting four to eight hundred dollars more under the Board's offer that what surrounding community colleges are offering. That's what you can point out to the faculty."

"You interrupted me, *Mister* Jensen!" Lindstrand said with angry indignation. "Don't do that again!"

Jensen turned so red with anger that he looked as if he might spill his own blood—or someone else's—on the spot. He somehow managed to hold his tongue to hear what was to come next.

"As I was saying, before I was interrupted, we aren't making any gain if all we're receiving is seventy-nine percent of the budget when that is what we received last year....We want at least eighty percent of *all* revenues this year."

"And where are we supposed to find the money?" Jensen asked.

"That's the easiest question you have asked in the thirty-eight negotiating sessions we've now had," Lindstrand replied. "The answer to your question is to get rid of just a couple of administrators....You have far too many as it is!"

When the two negotiating teams broke up, they each agreed to stand by for a call by the other in the hopes of reaching a settlement by the following Monday.

By prearrangement, on behalf of the Board, I sent a telegram to the local Union President and a news release to the *STAR*:

JUNE 11, 1970

THE BOARD REMAINS HOPEFUL THAN AN AGREEMENT CAN BE REACHED BY THE RESPECTIVE NEGOTIATING TEAMS PRIOR TO THE START OF SUMMER SESSION.

LESTER KLOSS
CHAIRMAN OF
THE BOARD

The news release that I submitted to the *STAR* on behalf of the Board was printed in full in the Sunday issue. It read:

> After nearly 40 negotiating sessions there does not appear to be close agreement between the Cook County College Teacher's Union—Local 1600 and the Board of Trustees of Prairie State College. The Union is currently demanding a 14.5 percent increase in salary increases alone which if granted would result in the highest salary schedule for two-year college teachers in the state. The college district, on the other hand, has an assessed valuation per capita which is near the very lowest of any junior college district in the state. This fact, coupled with an unusually low tax rate, ranks Prairie State at the bottom of the state in terms of wealth per capita. The voters on three occasions have rejected a tax hike and the College currently is forced to issue tax anticipation warrants.
>
> The Board has been mandated by the voters to exercise fiscal responsibility. To do otherwise would cause the College only to delay the time the College would be in the near impossible situation of certain large city schools—that have had from time to time to shut down.
>
> The Board's offer results in an average salary for the faculty of $15,154 for a 15 hour a week work load for a 36 week work year. In light of competing districts, and current local and national economic conditions, the Board believes its offer to be amply fair and competitive.

> It is the Board's earnest hope that the Union will re-examine its position and will keep faith with the students by continuing in their classrooms on Monday so that district students will not find it necessary to go elsewhere for summer school.

Friday was also graduation night. It was a most grim and gloomy affair for the faculty, the administration, and Board participants. Each group hoped for a settlement. All were fearful that an agreement could not be reached by the following Monday.

There were four people during the last week of Spring classes who had been as busy as the members of the two negotiating teams. They were the sponsor of the *PRAIRIE STATEMENT*, the editor of the *PRAIRIE STATEMENT*, the Artist-in Residence, and the Director of the Black Studies Program. The four put together a special issue of the College newspaper, which soon became a collector's item.

Graduation night came. The traditional speeches were spoken. I presented the class. The Board Chairman presented the diplomas. And when the last ritual was played out, the graduates, along with their families and friends, joined Board members and staff in the Student Center for refreshments.

The gathering was one of celebration and relief, a happy occasion. That is, it was a happy occasion until the special issue of the *PRAIRIE STATEMENT* was forced into the hands of each graduate, parent, and others assembled in the Student Center. Out of bewilderment and politeness, those assembled accepted the "present" that was firmly offered to each. Within 15 minutes all the papers had been delivered to the chosen targets. There, printed on the first page, was a copy of my memorandum concerned with the Black Studies program.

I was shocked at the crassness and gaucheness at what had occurred. The four "conspirators," on the other hand, of course, had to be elated once their hard work of preparation and the successful delivery of the special issue of the *PRAIRIE STATEMENT* to the target area had been achieved.

Neither the Student Publications Director nor the Artist-in-Residence (Sachio Yamashita, a very talented Japanese artist whom I had brought from Japan, and who I thought was a friend), were concerned by what they had done. They had resigned, and graduation day completed their contract year. The Director of the Black Studies Program was not concerned either—he knew he had 200 black students and an equal number of white students to form a defense wall around him. He also had the Union to defend him. He had no reason to fear man nor beast. The least person he feared was me. In fact, so conscious was this first year staff member who came directly out of teaching in an elementary school of his power that he was quoted in the special issue of the student newspaper as saying, "When heads of democratic institutions lose the confidence of the people whom they supposedly serve, they usually resign."

I trudged alone from the Student Center, where the graduation reception had been held, with a heavy heart and a bowed head. I clutched a copy of the paper in my hand and when I slid in behind the wheel of my car, I wearily placed it on the seat beside me. As I drove home all I could think of was, Why did I ever think I wanted to be a college president?

When I arrived home, I sank heavily into my black leather chair, after removing my coat and loosening my tie. My wife brought me a cold drink and then sat down silently across from me, neither of us exchanging more than half-a-dozen words during the next half-hour.

The front page was entirely filled only with my "bootlegged" memo on it. The second page contained the remarks by the Black Studies Program Director. Among other things, Cooke accused me of "scheming to undermine and destroy" his program by disbanding it and reducing "the director to a lackey, a house nigger...." Cooke continued, "It is a flagrant racist act for the President to want to disband this program which I refuse to accept...." He further stated, "Hostrop waited until most of the black faculty and black students were dispersed before trying to destroy the program. He plans to keep blacks out of the College and maintain the status quo."

The third page showed some of Sachio Yamashita's art work and the fourth and fifth pages were devoted to editorial opinions supporting the Black Studies Director, the Financial Aids Director and the faculty position in negotiations. There also was an article by Calvin Savage. He wrote:

> The Financial Aids and Placement Office at Prairie State College has always been a stepchild of the administrative structure of the school....
>
> Black students reasoned the College had hired a Black man to administer the financial aids program because they would be the major recipients of such aid....
>
> In performing my duties as a second line administrator, I ran into direct conflict with the 'white paternalistic attitude' toward its poor, culturally disadvantaged Black students....
>
> The Black students threatened, badgered, abused, slandered and attempted to discourage me by calling me an 'Uncle Tom' and by making threatening phone calls to my house....
>
> At the beginning of the academic year, I met with the Black students and local residents of the community, advising them that all students would be treated fairly regardless of race, color or creed ...but the Black students didn't like this. They went to 'Old Massa-White Administrator' to tell him lies and to say that I was not doing the 'Black Chillun' right. The the Black students got up a petition requesting the 'Old Massa-White Administrator' to fire me.

> The Black students forced, threatened, cajoled, tricked and intimidated 80 students out of 1,800 full time day students to sign their petition. Then through threats of violence and and propaganda, attempted to force 'Old Massa-White Administrator' to get rid of me.
>
> At the end of the school year, 'Old Massa-White Administrator' came to me and told me that 'because our Black students are dissatisfied with you and because you have made mistakes that displease them, please resign or accept a transfer to night school because you're 'Black anyway.' In that way no one will know that you are still on campus because they can't see you....
>
> On June 18, I will discuss my concerns with the Board of Trustees of the College. I hope they will agree with me and permit me to be retained as the Assistant Dean of Financial Aids and Placement.

The next two pages of the paper were devoted to pictures and stories of a rock festival. Drugs and nudity were extolled in pictures and words.

The final page was a full-page paid "advertisement" by the Union claiming that the Board had only offered a 2 1/2 percent salary increase. They protested over the fact that the President and Board Chairman refused to directly negotiate with them. The Union's final plea was to telephone the President and the Chairman to urge them to reach a settlement with the faculty. Both the business and home telephones of the President and Chairman were listed.

**"I'm finished...in more ways than one, L'eeOna. This was passed out at the graduation reception tonight....Read it if you can stand to or want to...."**

When my wife had finished reading the paper, tears were seen moving slowly down her cheeks. She said, "It isn't fair! No one is more deeply concerned about righting injustices than you are....It's not you who is a 'racist!' It's Cooke and those like him who seek power through intimidation, threats, name calling, and martyrdom....What are you going to do about this?" my wife finally asked.

"There's not much I really can do...I'm still going to try to see Cooke, but he's refused to see me even after two written requests to set up a time and place with me or Mrs. Pommer."

The Union negotiating team did not call upon the Board's negotiating team to meet on the Saturday before the opening of summer school—nor did the Board's team call upon the Union's. Both sides were playing a waiting game. On Sunday afternoon, the Board's team made the first move. Though the two sides met, it was soon apparent that a strike on Monday was inevitable. The Board's team was limited as to what it could offer. The meeting lasted only an hour with both sides breaking to get further instructions from their constituents.

The Board's final "Battle Plan," which was recommended by me, was revealed in a bulletin issued to students as they arrived on campus on Monday. It read:

SUMMER SCHOOL BULLETIN # 1

June 15, 1970

To: Prairie State College Summer School Students

From: Richard W. Hostrop, President

The Board of Trustees regrets that some teachers scheduled to teach summer school are not presently teaching. It is the earnest hope that before the end of the week that a full summer school will be in operation. Classes will remain open as will the

> College for those instructors and their students who wish to teach and learn.
>
> You must complete registration now if you have not already done so to ensure your place in classes should your classes materialize by Friday!
>
> Thornton Junior College in nearby Harvey is scheduled to begin their summer school session on Monday, June 22nd and Kankakee Community College in nearby Kankakee will begin their summer school session on Monday, June 29th. You may wish to consider one of these alternatives to your Prairie State College summer school plans for those classes you are unable to attend at least once at Prairie State College as of Friday, June 19th.
>
> Radio Station WCGO will keep you informed of developments as they occur at the College.
>
> It is most sincerely regretted by the Board that your summer school plans cannot be more definitely set at this time. Another summer school bulletin will be issued this Friday providing final word with respect to summer school operations.

Also greeting the students Monday morning were pickets. The local Chapter President was joined by the Cook County College Teachers' Union President on the picket line. The Union also had flyers prepared which they passed out to the students. Their flyer read:

COOK COUNTY COLLEGE TEACHERS' UNION

WHY ARE PRAIRIE STATE COLLEGE TEACHERS PICKETING

BECAUSE----they want Prairie State College to remain open to serve its students and the community.

BUT----the faculty believes that the College Board is not concerned about the welfare of its teachers when it makes offers like the following:

----a 2 1/2% salary increase at the same time cost of living increases 6% or more

----nothing to improve the present very nominal fringe benefits

----a work load which penalizes all faculty members who work with students in laboratories and self-study settings

The Board also refuses in 40 negotiating sessions to agree to anything more than a preamble and an academic calendar and it refuses to allow the college president or any board member to be a party to negotiations. Instead, it insists the faculty negotiating team meet with secondary administrators who have no power to act. The board also wastes taxpayers money by refusing to settle minor grievances below the level of arbitration. In addition, it hires leagal counsel from Chicago.

If you want quality education presented by teachers who are competent, skillful and concerned about students to continue at your community college, Prairie State, you can help by telephoning the college president and the college board chairman to express your concern.

Remember, the present contract expires June 11, 1970.

Dr. Richard Hostrop
President, Praire State College
phone: (college) 856-311
(home) 888-888

Mr. Lester Kloss
Chairman of the Board
(college) 856-311
(home) 999-999

Numerous threatening and cajoling telephone calls resulted to the Board Chiarman and myself. The Union leadership had unordered and unwanted pizzas delivered to my house, which I naturally refused to accept. A tow truck came to haul my car away because of a call received from someone misrepresenting me. Kloss telephoned Lindstrand to stop such tactics..."or else." The harrasment then immediately ceased.

# Chapter 14

# Circus Maximus

On the Saturday before the strike began, I received a telephone call at my home from the Board Chairman. Lester Kloss said: "Dick, I realize that you have been concerned about the respective roles of the administration and the Board in the governance of the institution for some time now....Rather than have this concern persist, Board members have suggested that we get together for an informal discussion at my house next Saturday so as to clear the air."

"Good, Lester. I think such a get-together could be very worthwhile....What time were you thinking of?"

"How about two o'clock?"

"That will be fine. I'll see you then."

However, it seemed a year had passed during the week I was to meet informally with the Board. Without a doubt, this one week was the most difficult period of my professional life.

The frustrated, would-be administrator, Lindstrand, and now the most powerful spokesperson for the Teacher's Union, issued a bulletin to the faculty which I felt compelled to answer and to distribute to the faculty during "the week that was."

## *STATEMENT*

The President has taken the position that he will not personally participate in negotiations. Dr. Hostrop's refusal to participate in negotiations makes a mockery of the entire process, since the college president insists that the administrative negotiating committee seek approval from him before any decision can be made at the bargaining table.

## *FACT*

The president has taken no position regarding personally participating in the negotiating sessions. The decision as to who should represent the Board was made by the Board upon advice of counsel. Just as the Board at no time has attempted overtly or covertly influence who will speak for the Union, the Board, likewise, cannot be expected to have dictated to it who will speak for the Board.

It is totally and absolutely false that the "president insists that the administrative negotiating committee seek approval from him before any decision can be made at the bargaining table." The Board's team is directly responsible to the Board. The president has not on any occasion insisted that approval be sought from him on any matter of negotiations. The president is concerned about the welfare of the faculty and the students and has wished to be kept informed of developments as has the Board —just as members of the faculty have wished to be kept informed of developments. This

> apparent attempt to polarize the faculty from the president is most unfortunate as is the apparent attempt to make a "scapegoat" of the president for matters entirely beyond his control.
>
> During this trying period it is necessary for all of us to exercise the greatest of compassion and understanding of the problems we are faced with. We must keep channels of communication open and attempt to seek out facts and understand On all sides of the issues facing us. I am sure we all wish for a speedy solution to these difficult current problems.

It was also patently evident who was behind an unsigned Letter to the Editor which appeared in the *STAR* during the first week the faculty was on strike.

> To the Editor:
>
> As a concerned taxpayer I can only register disappointment and disgust at the way the College Board of Trustees and President Hostrop are handling the strike by the faculty of Prairie State College. In the first place, when the board's negotiating team of lower echelon lackeys refused in every meeting for four months to negotiate anything except a preamble, they showed they are not really interested in negotiating a contract.
>
> The board maintains they have no money for a raise for the teachers,

> but just last week allocated $9,240 for data processing equipment for their own use and only a few months ago released information that President Hostrop had been given a very fat raise before his contract had even expired. Is there some kind of hanky-panky going on? Speaking of Hostrop, it seems, according to what I read in the STAR, that he has been spending his time writing and publishing a book for his own profit and sabotaging the Black Studies Program. Is he necessary? Since he will not deign to offer a helping hand on the board's negotiating team, why not fire the useless appendage? From what I've heard, the college is top-heavy on the administration side, anyway.
>
> The board member's wife I talked to last night said she doesn't care if they close Prairie State down permanently, but I think there a lot of parents whose kids attend the college who would like to see the college reopen with the teachers earning a decent salary. Let the board economize on the frills they've been voting, instead of on the most important part of any college, its teachers!

This Letter to the Editor appeared in the *STAR* the same day as the second Board meeting in June was scheduled. It portended the planned events to be expected that evening by certain unscrupulous members of the Cook County College Teachers' Union.

I drove towards the College that night knowing that irate striking teachers, whipped up into a cold fury by Lindstrand would be there. I also knew that I could expect Cooke to be there to lead a chorus of black students in an attack. I knew that this night would be the most difficult one, emotionally and psychologically, that I had ever faced. I was cognitively conditioned to this fact even though I couldn't affectively comprehend, in advance, the full fury that was to be.

As I drove up to the College's south parking lot I was thankful that I had asked Detective Hardiman and his plain clothes men to be at the meeting. The parking lot was nearly filled.

As Board members and I entered the Board Room we found that every chair had someone sitting in it—even our own. The room was also packed with standees of all ages, though mostly students in their late teens. In addition, a crowd of about 200 was gathered outside the Board Room. I quietly asked my administrators to bring additional chairs to the room from nearby offices for Board members, the Board's recorder, and for me.

As we awaited the chairs, I tried to impress upon Vice-Chairman Hill, who was conducting the meeting in the absence of Chairman Kloss, *not* to move the meeting under any circumstances. "That's what Lindstrand will try to get you to do," I argued. "If we go over to K-0-2, the meeting will turn into a Circus Maximus and we'll be the performers."

As soon as the meeting was opened by the Vice-Chairman, Board Secretary Mellecker moved "as a point of personal privilege" that the meeting be transferred to K-0-2. But the Vice-Chairman declined to entertain the motion on the grounds that the Board should make every effort to conduct its regular business in its regular place.

While the Board attempted to dispatch its short agenda of routine business items, the crowd shouted to be heard. Floyd Harris, a student who later admitted to my attorney that he was part of a conspiracy "to get Doctor Hostrop," led a roaring chant, "K-0-2...K-0-2...K-0-2!" Board member Griffith then moved that the meeting be transferred to the largest lecture hall on campus. The motion was unwisely unanimously approved.

The Board had reassembled by 8:45 P.M. in the well of the lecture hall before a crowd now numbering well over 300 persons. I believed the move a major mistake—acceding by the Board to the pressure of the clamoring and the chanting mob was already a first surrender to the forces of collective psychological aggression and intimidation. It would now be easier for the Board to make further surrenders.

The Board took another ten minutes to finish up its routine business. The business was completed with reasonable ease and dispatch. The crowd got what it wanted. They could take this ten minutes to study the faces and actions of the individual Board members and President sitting in the well below them. Each person sitting in the crowd had to have a sense of unusual power—the kind of power one feels when sitting on top of a mountain or standing atop the top floor of a skyscraper. The nine individuals sitting down below were smaller and less life-like from the crowd's height. Then, too, those in the crowd subconsciously knew that they controlled the fate of those below in a number of important psychological ways—few present felt constrained from performing psychological rape. The students and citizens from the community had been programmed by Union leaders to sit in the center section of the 300 seat lecture hall along with Benjamin Cooke and his entourage of black students. The Cook County College Teachers' Union President, Norman Swensen, as well as the state-wide Union President sat together on the northern tier of seats along with about half of the local elementary, secondary, and college Union members. The same pattern had been established for the southern tier of seats where the CCCTU Local Union President, Raymond Lindsrtrand, had ensconced himself.

It isn't by accident that the judiciary, legislative, and most other public bodies sit on *raised* platforms. It psychologically balances greater numbers in a typical audience. But in K-0-2 the entire situation was reversed...we were looked down upon a crowd outnumbering the Board and Administration by a ratio of better than 30 to 1. It was like being in a Roman coliseum...and I knew who the intended victim was to be— me.

According to an obvious plan, as soon as the Board completed the business portion of their meeting, Floyd Harris rose to be recognized.

Vice-Chairman Hill firmly stated, before recognizing the student, that anyone wishing to speak to the Board must first give his name and the city, town or village where he lived. He also stated that the Board would hear speakers from the floor so long as the discussions did not become repetitive. But she lost control. She permitted the sadism that was to follow to continue for over four hours. "Your name," Vice-Chairman Hill asked.

"I am Floyd Harris of Chicago Heights. I am President of the 'Student Strike Committee.'"

"Yes, what do you want to say?"

With trembling hands and a shaky voice, which was barely audible, Harris read his statement:

"We, the student body of Prairie State College, are not demonstrating or rioting. We have accepted temporary building structures and fees. We, the students and faculty, have built a progressive institution of learning not to be destroyed or detained by a small percent sign!...Individual faculty members have given and shared their energies, enthusiasm and positive abilities to encourage and enable us to progress and mature. Without them, we would stagnate. So that this stagnation does not occur, we ask the answers to four questions:

"One, why the indecisiveness of the Board's negotiating team?

"Two, why the lack of interest or courage by the College President in backing our faculty members?

"Three, Why the lack of interest by the President and the Board's negotiating team in the students' welfare?

"Four, Why should we care?

"We, the students, hope that you, the Board, will put first-class teaching above all else. The time of reckoning is now!...Nothing less than a first-class settlement will be accepted or tolerated by the students."

Harris sat down to a thunderous applause and an even greater thunder from stamping feet begun by the three assembled Union presidents.

Next to speak was a student enrolled in the College's dental hygiene program. She asked, "Are you going to close summer school?....I'll lose a year's progress in the dental hygiene program if classes do not begin on Monday."

Vice-Chairman Hill answered, "That decision cannot be made by the Board....That decision will be made by the teachers." The Vice-Chairman's response was greeted with "Noes!" by the programmed audience. "It will be for the Board to decide!" they loudly chanted to the signal given by a Local 1600 Union Chapter officer.

Another student was recognized. He proposed that the faculty be given the same percentage salary increase the President had received. His proposal was echoed by a half-dozen other students.

Board Secretary Mellecker stated, "Our offer to the faculty will result in higher salaries for them than any other of the three surrounding community colleges....Shouldn't that be acceptable?"

The partisan crowd chorused, "No! No! No!"

A *high school* Union member next rose and added, after giving his name and city of residence, that he was at the meeting as a concerned citizen. "What I am worried about," he said, "is that you will get second rate people with second rate salaries."

The high school Union teacher's charge produced another loud ovation from the audience.

There was at least one Board member as well as myself who realized we were watching a performance. It was not we but the audience that was on stage. It was pure guerrilla theater.

A puppet of Trustee Jackson said, "Let's focus on the main issue....How do we get summer school open?...I voted for most of you sitting there. I want to know how each of you are going to vote on the opening of summer school on Monday. You, Mrs. Hill, how are you going to vote tonight?" he began.

"I will not answer your question Mr. Rouse. The decision for the opening of summer school is in the hands of the faculty—not the Board!" Vice-Chairman Hill firmly declared.

Her answer, as before, was greeted with hoots, howls, and cat calls.

"You can give them a decent salary so they can teach on Monday, though!" Turner Rouse, an elementary school principal in Park Forest, declared to rousing cheers. "I want each of you to inform these good citizens and faculty how you're going to vote tonight on their salary proposals."

"Again, Mr. Rouse, we will not answer that question ....The Board makes the salary decisions, under State law, in executive sessions, and those decisions are made by the Board as a body...not as individuals."

Benjamin Cooke rose next.

"Yes, Mister Cooke?"

"I want to know if the Board is going to support President Hostrop's stand on the Black Studies Program?"

"What stand? No proposal for any change has been presented to the Board by him," the Vice-Chairman declared.

"He has a diabolical scheme planned to emasculate the program and to try to make me a 'house nigger,' the Ethnic Studies Director claimed while waving a copy of my confidential memorandum to my Cabinet in the air. "Well, I ain't goin' to be demasculated and I ain't goin' to be made into no 'house nigger!'"

Cheering, clapping of hands, and stamping of feet reverberated throughout the large lecture hall for nearly five minutes at this declaration.

When the din of support subsided, and several black students spoke in support of the Black Studies Program, the Editor of the *PRAIRIE STATEMENT* rose to be recognized.

"Yes, Miss Gallo?" the Board Vice-Chairman said in recognition.

The *PRAIRIE STATEMENT* editor began confidently. She was very much caught up in the excitement of the living theater of which she was a part. "Do you mean to say you do not know about the President's secret memo to his Cabinet?"

"We know about it, Miss Gallo. But it was only a discussion memo. I repeat," Vice-Chairman Hill said, "that no proposal for any change has been presented to the Board for consideration."

"Then you admit that you know of the President's diabolical plan?"

"I would hardly call the proposals diabolical, Miss Gallo, the Vice-Chairman answered. "To repeat, it was only a discussion memo and no proposals have been presented to the Board."

"But what if he does submit his memo to the Board to be acted upon?" the student newspaper editor persisted.

"Neither the Administration nor the Board is contemplating any changes in the program. That really is enough on that subject," Vice-Chairman Hill concluded.

I was very surprised at Hill's answer for I had every intention of proposing certain minimal changes in the program. However, the Board was never to even let me seriously discuss changes with them, let alone *make* changes.

"Why are you trying to demasculate the Black Studies Program?" the student editor asked of me.

I gave no answer.

"Why are you trying to demasculate the Black Studies Director?" the editor next asked.

I still gave no answer.

"Why do you use such terms as 'minorities'...aren't we all 'minorities?'"

When I decided to reply, my voice was controlled ...barely. My vocal control was in sharp contrast to the seething emotions boiling within myself, not over the audacity of this brash student, but over the unethical conduct of those who were using her. I knew a manipulator was pulling the puppet strings of this youth. Local 1600 Union President Lindstrand head was cupped in his hands. His hands were anchored to thick arms whose elbows rested vertically against his knees. His eyes were aflame. His face was deeply flushed. He looked like a wild beast eagerly anticipating a kill. I took a deep breath, then said, "I refuse to reply to any questions concerning a confidential document illegally obtained and illegally used."

"Then you admit, Rose Gallo asked, with a tone of victory, "that you have poor communications with the students and the faculty?"

I refused to reply to the question. Instead, I forcefully declared, "What you're trying to do here is hold a kangaroo court!"

"Well, I'm sorry if that's what you believe the students, the faculty and concerned citizens are trying to do here," the student editor said in mock dismay. She then sat down.

As soon as Rose Gallo sat down, Floyd Harris rose once more to be recognized. In his right hand he now held two sheets of white paper.

"Yes, Mister Harris," Vice-Chairman Hill said in recognition.

The President of the Student Strike Committee lifted up the papers to reading level while he stuffed his nervous left hand in his blue coverall jacket pocket. He began to read slowly, deliberately, and with oratorical passion from the sheets which I believe were prepared with the aid of my nemesis Lindstrand.

"The students demand the immediate dismissal of College President Richard Hostrop!"

To this bold declaration all but the College faculty went into a near frenzy. This public demand had obviously been long planned, long anticipated, long awaited that evening. To savor the full flavor of this declaration the pandemonium lasted for a full ten minutes. During this time I slowly gazed at each person I recognized in the room. No one sitting at the Board table showed any readily evident emotion. A barely faint curl of satisfaction could be discerned on Trustee Griffith's mouth. Trustee Jackson's feelings were betrayed only by his own calm gaze out into the audience. Other Board members, for the most part, just looked down at the table. The Board's Recorder and my Secretary, Meredith Pommer, showed her emotions only in the more than usual trembling of her hands. None of the faculty clapped or shouted —they seemed transfixed— embarrassed—

—almost as though they were caught naked in an embarrassing pose. That is, all were like this except one. The one notable exception was Raymond Lindstrand. When I rested my gaze upon who I believe was the chief engineer of the evening's events, my gaze was returned four fold: Lindstrand defiantly increased his clapping, increased his cheering, increased the stomping of his feet as he looked full-face into my face. Exultant triumph was spread across his ruddy, crease-lined features.

When at last the demonstration of support for my dismissal ceased, Harris continued. "The President should be immediately dismissed because he alone is responsible for the two strikes in the three years that he has been here!"

A three minute demonstration in support of his statement followed.

"The President's responsibility for these strikes has been responsible with interfering with the students' educational progress."

A two minute demonstration followed.

"President Hostrop's widely publicized memorandum on the evaluation of the Ethnic Studies Program would lead to the destruction of the Program and the emasculation of the Director.!"

Cooke rose to his feet as this justification for my dismissal was presented. He was immediately followed by the black students who, along with him, punched the air with clenched fists in rhythm to "Right on!....All power to the students!...All power to the people!"

Director Cooke and members of the BSU were joined in loud support by most others present.

"The President has been responsible," Harris continued, "for deflating student interest in the College by failure to make progress in building any permanent structures and paving the parking areas!"

Mild applause and cheering followed.

"The President's lack of concern for faculty and student welfare, as demonstrated by his unwillingness and failure to directly participate in negotiations with the faculty, has resulted in more than forty fruitless negotiating sessions. He is responsible for this chronic waste of time, money and talent by his steadfast refusal to meet wit the faculty's negotiators!"

A three-minute demonstration in support of the charge followed.

"The lack of communication between the President and the student body seemingly threatens anarchy!"

A two-minute demonstration followed.

"Finally," Harris declared, "President Hostrop's poor administration has led to a poor psychological climate on campus so that teachers find it difficult to teach and students find it difficult to learn."

A thunderous standing ovation came at the conclusion of the ad hoc President of the Students' Strike Committee's remarks as he at last sat down.

When the partisan audience finally quieted down, Norman Swensen rose to be recognized. The President of the Cook County College Teachers' Union spoke and gesticulated with a fervor and a passion more than equal to the performance of even the two rehearsed students. He began with a question: "Is the rumor true that the Board wants to prevent the opening of summer school?"

Board members remained silent.

"I've asked you a question! We want an answer!" The CCCTU President exploded.

"The decision about teaching summer school is up to the faculty, Mister Swensen. The Board has never closed summer school. The College has, is and will remain open for those teachers who wish to teach and those students who wish to learn," Vice-Chairman Hill asserted.

"You have no summer school! How many teachers are teaching?" Swensen demanded to know.

"You have asked the wrong question, Mister Swensen ....I repeat, the Board emphatically has *not* closed summer school at the College. The questions you are asking should be addressed to the teachers. The Board has not prevented classes from being taught. There has been no lock-out. Instead, there has been an illegal strike!" the Vice-Chairman answered in an ever rising and ever uncontrolled voice.

The answer given by Vice-Chairman Hill brought forth howls of protest from those in the audience.

"If the Board would give a decent salary offer, then the faculty could go back into the classroom. Teachers are professionals....Teachers have families....They have to eat and have a decent roof over their heads befitting a professional. *You* are keeping them out of the classroom by denying them the right of self-respect. Well, you can't take their self-respect away from them. They aren't going back into the classroom until they receive the kind of salary befitting a professional....They aren't going back into the classroom until they can do so with self-respect!"

Board Secretary Shirley Mellecker responded to the charges of the CCCTU President with the use of a partially prepared written statement. "Mister Swensen, you are not a member of the Prairie State College faculty. When the Board recognized the local Union they did so in good faith with the belief that the likes of you would not be a spokesman for them. You are an outsider....You are a disrupter....You are an interloper!"

"Madame!"

"I am not finished, Mister Swensen....As I was saying, we never had a strike before. Since you have come upon the scene there have been two strikes. The likes of you need conflict...confrontations...and strikes to remain in office. Unions feed on competition for power than on cooperation for the common good!"

The Cook County College Teachers' Union President stood unshaken and unmoved as the Board Secretary's harangue punctuated the air. His physical stance and lack of change of expression or color on his face only confirmed the Chinese proverb on the subject. His face spoke a thousand words. He had been verbally abused by professionals. He told her as much.

"Madam," I have been maligned by professionals. Your words were proof as to why faculties need a union. The day has passed when Boards can behave paternalistically toward the faculty as if they were children. Children are given an allowance. We are not children. We are adults. We are professionals. Professionals require a professional salary...not allowances given to children!"

To this rejoinder, the partisan audience rose to their feet on signal by Lindstrand who led the clapping and the "Tell it like it is's!"

The CCCTU President continued, "I remind the Board that I, too, am a taxpayer in this state and county. My taxes are also going to pay for this College. Call me what you will...but I am speaking on behalf of *this* faculty just as any resident of the state has a right to do!"

"Mister Swensen...do you have anything new to say?" the Vice-Chairman bitingly asked.

"Yes, I do!"

"Well, get on with it then!"

"I was saying that the Board has no respect for its faculty. The evidence of this is not only in the pittance offered the faculty but in the fact that you, Mrs. Hill, refuse to respect the faculty by sending second-string lackeys to negotiate for you. To use these administrative mercenaries is an insult to every member here....If the Board had any respect at all for the faculty, there would be two Board members...including the Chairman...who would be negotiating with the faculty."

Then turning to me, the CCCTU President jabbed his right index finger toward me a half-dozen times as if it were a foil and said accusingly, "And what has been said goes double for you, *Doctor* Hostrop!...You are supposed to be an educator. You're supposed to know better. You're supposed to be the leader of the faculty. You're supposed to represent the faculty's interests....But you, sir, Swensen said with ever bitter sarcasm, "don't...give...a...damn!"

"That isn't true and you know it!" I protested.

"Aha! Then you are at last willing to sit down with your faculty to negotiate a professional settlement.?"

"I will not negotiate except upon direction by the Board....and the Board must rely strongly upon advice of counsel."

"And why does counsel advise you to not participate, Doctor Hostrop?...Come, do tell your faculty why counsel advises you as it does."

"Because to do so could create a lasting adversarial relationship long after a settlement was reached....I am supposed to represent all the interests of the College...not just the Board alone...though make no mistake, I serve as the chief executive of the Board."

"And Doctor Hostrop, do you think you have a good relationship with the public you are supposed to represent ....You mentioned faculty. I suppose you mean students, too.... Do you think you have a good relationship with the students?"

I realized that I had allowed myself to be trapped into answering questions. My resolve to remain quiet at the meeting had been a sound plan as I more than ever now clearly saw. I nevertheless felt compelled to answer, knowing full well in advance what the response would be by the kangaroo court I was upward facing.

"Yes! I most certainly do. My office is always open to students. No student has ever been turned away from seeing me. I believe I have the respect of the majority of students on this campus."

I was correct. The hundred or so students present rose en masse shouting that I did not have their respect...that they had not been allowed to see me...that I didn't care about the students...that I must go.

Rose Gallo remained standing after all the other students had sat down. The *PRAIRIE STATEMENT* editor, though she didn't know it, was being pitied a hundred times over by the man whom she now began to attack. She said in the voice of a small girl:

"Doctor Hostrop doesn't care about the students. He doesn't visit with us. He never comes to see us. He doesn't want to be with us.... Well, if he doesn't care about us.... Why should we care about him?...He has to go. We need a president who cares about us."

I thought to myself, I cannot be a father surrogate to all the hapless students. I can't even be the father figure to the faculty. Many of the students and many of the faculty want a father for their President. I can't be that. But that is why there exists this love/hate relationship. That, I suppose, is part of the appeal of the Union—strong, domineering father figures of their leaders that the faculty can give blind obedience and loyalty to...notwithstanding their vehement rejection of "paternalism." In this instance, I watched with almost compassion as my tormentor slowly sat down. I said nothing.

My thoughts were interrupted by the abrasive sound of Lindstrand's voice. He asked, "Do you *still* think you have a good relationship with the students, *Doctor* Hostrop?"

I looked straight into the eyes of the messianic leader and softly but unhesitatingly replied, "Yes."

"And what of the faculty, *Doctor* Hostrop?"

"The relationship this year with the faculty has been the best it's ever been."

While the College faculty remained silent at this answer, the elementary and secondary school Union teachers shouted out, "It's not so!"

"What about that for an answer, *Doctor* Hostrop?"

"My answer stands."

"Well, you might think your answer will stand, but I intend to find out a few things...from you...from the Board...I am proposing here...publicly...that the Board and the President immediately go into an executive session to hammer out an agreement so that the students can get back into the classrooms where they belong on Monday!"

Lindstrand waited for an answer. He undoubtedly knew what it would be ahead of time but he also knew that it would "prove" to the faculty that the Board and the President did not give a whit about them.

"Mister Lindstrand, to repeat for the umpteenth time, the Board at no time has attempted to dictate to the Union the composition of its negotiating team," Vice-Chairman Hill said, "and we aren't going to be dictated to by the Union as to who will be on our team....The subject is closed."

Lindstrand turned to the audience—spread his stocky arms out wide—hunched his shoulders, and sat down. When he sat down, Swensen stood up to clap and cheer the Local 1600 Union President. Swensen was immediately joined in the ovation by nearly everyone else in the "packed" audience.

The state AFT Union President then rose to speak to the tattoo of clapping. He raised his left hand for silence. His rather lean, short, rough features and clothes belied the polish of his oratory. He began to speak only after absolute quiet in the large lecture hall prevailed. Calmly and deliberately he began his reasoned appeal after introducing himself.

"The issue at hand is really a very simple one. The Board would like to see the faculty back in classes on Monday. They would like to see the students back in classes. I am sure the President of the College feels the same way. I know the faculty wants to teach....Certainly, the students want to attend classes here...in their own college. Our task tonight is not to make charges and counter-charges...rather our task is to find a way...a means, whereby this can be made possible. It has been suggested that the Board and President meet with the faculty negotiating team...I personally believe this is the speediest and most realistic way of closing the current impasse....However, if the Board insists in keeping with its current administrative team, I suggest...here and now...that they begin negotiating around the clock until a satisfactory settlement is reached."

The now usual clapping and cheering followed. The Board and I gave the state AFT President's manner, if not his suggestion, silent approbation. But I also recognized the "brainwashing," softening-up" technique employed—first you viciously attack...and then you follow up with reasonableness to achieve your objective—the "Bad Guy?Good Guy" technique.

The speech was ended. The clapping stopped. Lindstrand then rose to once again speak. No one present could fail to recognize as he stood that this night belonged to him, above all others. His whole being seemed alive as never before. He spoke as he had never spoken before. His words rang out through the lecture hall. He must have felt like David slaying Goliath.

"Tonight," Lindstrand declared, "has been a great moment! We are together!...We have a common purpose!...and that purpose is to develop and reform the College in a triumvirate of faculty, students, and community people!...Never again will the faculty accept the role of serfs!...Never again will the students accept an obstacle between themselves and their teachers!...We shall overcome!...All power to the students! ...All power to the faculty!...All power to the people!"

The crowd joined in Lindstrand's power slogans. Like him, fists were repeatedly thrust into the air as he culminated his emotional declarations.

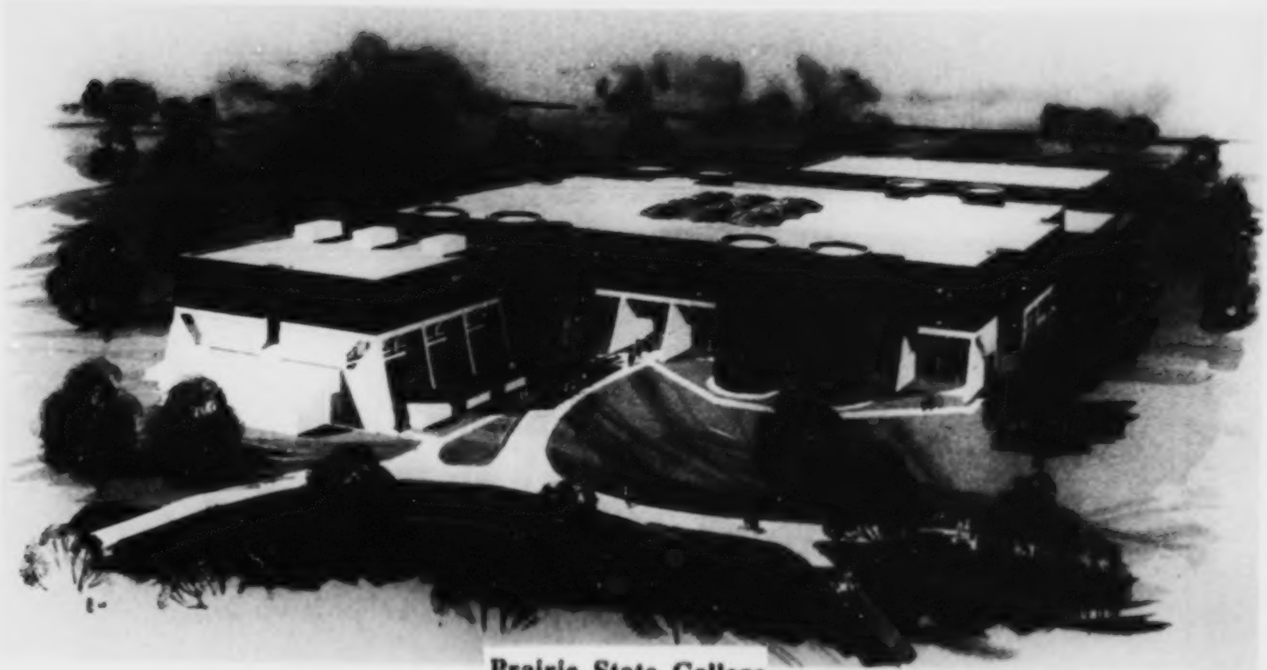
He sat down. Quiet finally came until a former Catholic priest, who now was a bearded, married, psychology instructor, directed a question to the Board. He asked, "Are you going to hold classes Monday or aren't you? The students, the faculty, the community...all of us are hear to learn the answer to that one simple question....What is it to be?"

"I must repeat what I have said before," Vice-Chairman Hill answered. The Union has submitted what they say is a final counter offer. We will consider their offer in executive session tonight. Our answer will be given tomorrow...but I repeat what I repeated earlier; if summer school is not held at Prairie State College, it is because that decision has been made by the faculty ....The Board has not closed summer school....The faculty's witholding of services has been responsible for the lack of summer school offerings."

This now-standard reply brought forth a wave of protest led by the psychology instructor who began pounding his feet up and down on the floor in what can only be described as a tantrum. He then rose, grabbed his coat, began stabbing a finger at the Board as he walked out of the room, labeling Board members with shouts of "taxpayers' lackeys!"...."power-mad chauvinists!"...and "establishment stereotypes!"

He was joined by most others in the audience who followed him out the door to various euphemisims—and other epithets that were not so euphemistic.

The Vice-Chairman had stupidly allowed speakers to speak from the floor for *four* hours. Nothing positive had been accomplished. The rage was now deeper among the faculty—as the Local, County, and State AFT Presidents must have known it would be—than before the Board meeting had begun. The Board's position, moreover, if anything, had stiffened since no hint was given by the Union that they might lower their demands. This proved true in the executive session that followed. It lasted through the night until 6:00 A.M.! I had been made into a scapegoat and sacrificial lamb to be used to pacify the Union, the Black Studies Director, or both—at some appropriate time.



Prairie State College

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# Black

# Thursday

# Chapter 15

## July 23, 1970

Saturday afternoon came. It was June 20, 1970. The long awaited informal meeting between Board members and myself at last took place. After the kangaroo court of Thursday evening, I wondered as I drove to the Board Chairman's house what kind of a reception I would receive. Would they be supportive or would they disassociate themselves from me. The answer that came that day was not clear.

"Well," Lester Kloss began, "I guess you know, Dick, that there have been some concerns that the Board has had and we know that you have had some concerns about the Board.... We thought, rather than have these concerns fester, that if we got them right out into the open and talked about them, then the air could be cleared and we could go on from there....I think it perhaps might be best if we just went around the room, giving each Board member a chance to express any concerns he or she might have. Then, Dick, you can respond and express those concerns which you have with respect to Board-President relations."

"Fine," I said, taking out the pad and pen I had carried with me for taking notes. While each Board member spoke, I wrote down what was said—making no attempt to protest or respond until it was my turn to speak.

"Why don't you go first, Shirley" Kloss suggested.

"Well, just let me begin by saying that I like you, Dick but I'm concerned that you have undertaken some writing responsibilities. It seems to me you should have enough to do at the College that you wouldn't have time to write books....I also resent the fact that you started the Storefront Academy and didn't involve the Board when you first began considering the idea. Those are my main concerns," the Board secretary concluded.

I sat passively, without a hint of emotion, as the comments were hurled at me. I only wondered as Shirley Mellecker was speaking—and as others subsequently spoke—why I had ever wanted to be a college president. This session, following upon Thursday night's marathon, was almost too much to bear.

"Doris," Kloss said in indication that the Vice-Chairman should speak next.

"I have several concerns," she began. "I am disturbed at the way you handled Benjamin Cooke and the leak of the memo. This has caused all kinds of problems which I frankly don't think should have been necessary. Like Shirley, I am greatly disturbed that you are writing books. You should instead be circulating more among the students, the faculty, and the community...."

"Tom."

Trustee Thomas Porter said, "I have a question. My question is, 'What can the Board do or not do…to help the administration do a more effective job?'"

"Okay, thanks, Tom....Jim, how about you next?"

"Well," Trustee James Griffith said, "I was greatly disturbed about the mishandling of the Storefront Academy and Calvin Savage. These are matters which should never have developed into problems....My other major concern has to do with your memorandum on the Black Studies Program. You should never have written it in the first place. You were not authorized by the Board to do so."

"Tony."

"I think a president should be a good P.R. man. That's all I got to say," the football fanatic said.

"Bill."

Trustee William Jackson said, "I am concerned about the mishandling of the Cooke and Savage matters. These matters could have long-lasting effects which could polarize the black students from the President and students from students. Such polarization could lead to...shall we say difficulties.?"

"I guess that just leaves me," Chairman Lester Kloss said. "I'm concerned, Dick, that you seem possessive about the College and that you are overly sensitive when the Board doesn't agree with one of your recommendations. Like Shirley, I also think you twisted arms to get your contract extended last year. There was no need for it. You were operating on a contract which still had a year to go....Oh, I know, some of the Board members said you ought to have it extended....But you sure didn't put up any fight about signing a new one. You, in effect, forced yourself on *this* Board...and, frankly, I resent it. Moreover, I resent your writing books....You shouldn't have written that memorandum on the Black Studies Program. It only created controversy....The Storefront Academy still riles me...."

When Kloss finished speaking, he looked at his watch and announced, "It's nearly five-thirty. We won't have time to give you a chance to answer or to express any of your own concerns, Dick. So let's set a date for that."

Each person checked his appointment book. It was agreed that we would meet again on June 29.

I said as I left, "Thank you for your frankness. I feel confident that I can respond satisfactorily to all concerns expressed. I am particularly anxious that our next meeting be one in which goals will be set. With such a rapid turn-over in Board membership, I am frequently put in the dilemma of trying to guess what the Board expects of me. By establishing mutually agreed upon goals, we can move ahead.... I welcome this and am ready to be held accountable. If I achieve the goals which are set, I would expect to be properly 'rewarded.' If I cannot achieve well-defined, measurable goals, then I would expect that my contract not be further extended.

"You can be assured that I will only write and speak out to the extent of what is within the Policies and Procedures of the Board."

Several Board members expressed irritation at my concluding remark. A sensitive nerve had been struck. It was obvious that they did not want to be bound by mere written policies.

As was proven later, the meeting just held had been held in bad faith. The Board had no intention of meeting with me again. They did not want me to comment on their remarks. They did not want to hear my concerns regarding Board/ Administration relationships, let alone set goals. They had hoped instead that the Saturday meeting would have led to a resignation. They wanted that resignation badly so as to appease, in one swell swoop, black militants and the Union. When this objective was not achieved, Board members met secretly among themselves and with an attorney—in violation not only of their own Policies and Procedures but in violation of state law.

While the meeting at the Board Chairman's house was taking place, the respective negotiating teams were in contact with their labor counselors. The Union's attorney suggested making no overtures until Sunday—just to stand by in case the Board should make a move. The Board's negotiating team was offered similar advice. A battle of nerves was in progress. However, there was one substantial difference in tactics between the two teams. The Union planned to propose that local political office holders mediate the dispute. The Board planned to propose federal mediation as means of resolving the differences. Both groups got their way.

On Sunday, the Union's negotiators made the first move. They proposed to the Board's negotiators that a local state

Senator mediate the dispute. Dean of Administrative Services, Dick Jensen, chief negotiator for the Board's team, said their team would meet with the Union team and the State Senator.

"....However, I am skeptical that a legislator is the appropriate kind of individual to mediate our differences," Jensen said over the telephone to Board Chairman Kloss.

The respective teams met for five hours, to no avail, in the Chicago Heights Holiday Inn. To save face for the State Senator, he was given credit by both teams for referring the matter over to federal mediation. As a result of this agreement, a joint statement was issued by the Board and the Union that the dispute was being referred over to federal mediation. The Union leaders met with their membership at six P.M. in K-0-2. The vote was unanimous that they report back to their classrooms the following day.

The day the faculty returned to their summer school classrooms, Union President Raymond Lindstrand issued a bulletin to be distributed by the teachers to students in each of their classrooms. The bulletin was a justification of the faculty's "boycotting" of classes..."because it had become increasingly evident that the Board and Administration had no real interest in resolving the crisis...that the faculty was influenced by the extensive student and community support of the faculty's position...that the future of the College was also a factor in our decision to return to the classroom....That the faculty is hopeful that mediation will bring about a fair settlement...that no further actions will be necessary to interfere with the education of the students...and that students and community people will continue to work with the faculty in developing and reforming the College."

When a copy of the bulletin was brought in and shown to me by my secretary, I ordered that the bulletin be pulled from every faculty mail box. I told Mrs. Pommer, "It's one thing to pass out Union literature to students when they are outside their classrooms, but for a teacher to use his classroom as a place to pass out Union propaganda is quite a different matter. With academic freedom, goes academic responsibility. This action by

Professor Lindstrand is the worst kind of academic irresponsibility!"

"Dick, Les, here. I'm sorry, but we're going to have to cancel our July sixth meeting. Everyone is just too busy this time of year...."

I turned to my wife after I hung up the telephone and said, "I'm concerned. First Kloss said there wasn't time for me to speak after each Board member had a turn at his house. Then the June twenty-ninth meeting was postponed until July sixth. Now I get a call from Kloss cancelling the meeting altogether rather than at least just postponing it again....I think it's a mistake to let this matter drag. I have a lot I'd like to say to the Board members. There's no telling when I'll have a chance now."

"You're not concerned about your own status, are you, Dick?"

"No...of course not, LeeOna. I have two years remaining on my contract...unanimously passed just three months ago. After serving the College for three years my apprenticeship is over. We've had some problems with the Union and the Black Studies Program. But these problems have essentially been of the Board's own making because of the Board's increasing involvement into the internal affairs of the College. I know some Board members aren't happy over my resistance to their desire to make the College into one big ego toy for them to play with. This should be the strength of a contract though. It allows a president to express responsible opposition to proposed ill-conceived policies detrimental to the College. Just as tenure is supposed to protect a faculty member from being dismissed for expressing views that may be contrary to certain ones held by some individual members of the Board, administration or members of the community, an administrator's contract serves a similar purpose. To dismiss a president because of his views or administrative actions that may be contrary to certain perceptions the Board may have on some given issue would be the acme of irresponsibility. A president's role would be compromised beyond belief if he so feared for his security that he felt he could not follow the dictates of his conscience as to what is best for the institution. Obviously, within the constraints of official board actions and policies. If he didn't think his contract was sacred, he would be reduced to a jelly fish. Instead of being the chief executive officer of his board, he would instead become its chief errand boy."

"You're not saying, I hope, that without a contract you'd permit yourself to become an errand boy?"

"Of course not, LeeOna! I operated without a contract for the second year I was here as you well know. But what I am saying is that I am one of a distinct minority. I've met too many administrators who, without a contract, would be much less effective than they otherwise would be. If a contract provides them with the security they feel they need, so that they feel free to openly and honestly express their real feelings as to what is best for the institution, irrespective of who their remarks might hit, then I say that institution is better off by providing its president or school superintendent with the degree of security assured by a contract. Knowing that a CEO has a contract tends to make an irresponsible or capricious board less irresponsible or capricious than it otherwise might be. This is certainly now the case at Prairie State...they want an errand boy instead of a leader....a contract at Prairie State College is now essential."

"Well, I hope you're right, that your position is secure, even if some are trying to be *the* administrator. I don't have much faith in the integrity of most present Board members ...and I haven't since the last Board election in April when Dale Collins went off the Board. He was the stabilizing influence on the Board with his years of experience as a Board member."

For a week, conditions on the campus remained quiet. The faculty was teaching summer school. Negotiations were continuing under federal mediation, though not getting too far. I was finalizing vacation plans to California scheduled to begin in two weeks.

Kloss met in the office of Anthony Scariano on Saturday, July 11, 1970 as a result of the agreement the Board came to in its last secret and illegal meeting regarding my status at the College. As a result, Board Chairman Kloss that night telephoned me.

"Dick, this is Les. I want you to meet me at Anthony Scariano's office on Monday at four o'clock....Yes, the attorney. His office is in the Ashland Building. Remember, four o'clock....Good-bye."

"That was Lester Kloss again, LeeOna. He wants me to meet him Monday at four o'clock at Anthony Scariano's office. He's a lawyer."

"What for?"

"He didn't say. I can't figure it out because Scariano is not the College's regular attorney."

"I don't like it!"

"I don't either. It smells. Yet, I can't think of any reason. I don't see how it really could have anything to do with my contract. The Board hasn't said anything. Still....Well, we'll just have to wait and see."

Monday noon, four members of the Board held an off-campus Board meeting in the medical office of Dr. William Jackson, a meeting that lasted for five minutes. Scariano was employed at 40 dollars an hour as special counsel "to handle personnel matters." I had not been informed of the special meeting—the first such time I had not been informed and the first such time a meeting had been held off campus. Promptly at four o'clock I appeared at the attorney's office. Ten minutes later I was joined by the Board Chairman. Shortly thereafter Attorney Scariano emerged from his office and led us to a downstairs conference room. The attorney was the first to speak after each of us had seated himself—Scariano and Kloss on one side of a large mahogany table, and I on the opposite side.

"I suppose you know the purpose of this meeting," Scariano began, looking disarmingly at me.

"As a matter of fact, I don't."

"Well, then, I'll come straight to the point. The Board wants its relationship with you terminated, effective immediately ....This is no surprise to you, I'm sure."

"It certainly is!" I exclaimed as I withdrew a pad of yellow-lined paper from my briefcase and then removed my pen from my shirt pocket to take notes as the two men spoke.

Scariano said, "Look at the situation like a marriage ....Some marriages work out, some don't. When two parties are no longer compatible, they get a divorce. The faster and cleaner the divorce, the better for all parties concerned."

"Do you have something to show me...a statement of charges?" I asked.

"No," Scariano answered. "We thought it best just to talk informally....We could give you a list, but we hope to settle this matter as swiftly and as amicably as possible."

"That's right, Dick," Kloss joined in. "But you know what the Board's unhappy about....We told you over at my house....The Store Front Academy...your contract...all your writing commitments...the way you handled the Black Studies Program...Calvin Savage....

"The Board is most anxious to settle this matter by next week," Scariano added.

"I believe I can satisfactorily answer each allegation that was made. The meeting at your house, Les, was never billed as a meeting to seek my resignation, as you well know. I was supposed to have a chance to respond and to express concerns of my own...first on June twenty-ninth and then on July sixth."

"None of that is really important at this time. You have to understand," Scariano said, "that the marriage is over!...You and the Board are no longer compatible. They want out ...period!"

"The Union has even come to the Board, Dick. They offered to lower their economic demands by one hundred fifty thousand dollars, if the Board will assure your resignation or termination by fall....But the straw that really broke the camel's back was your writing that Black Studies memorandum and then allowing it to leak out.... And I particularly resent the fact that you're making good money but you insist on writing books. It might be all right for university presidents to write books, but certainly not junior college presidents!"

"You've really made up your mind," I asked with an incredulous tone in my voice, "notwithstanding my contract and your own Policies and Procedures?"

"Yes," Kloss defensively answered. "You act as if its you who owns the College. We want out. Policies and Procedures be hanged! As for your so-called contract, it is our position that you have none. The clause 'and will devote full time to said employment' was omitted in the April contract....And besides Mister Scariano has advised us that the Board cannot issue a contract for more than one year....The Board must do what is best for the College. That is our responsibility....You're going will solve a lot of problems for us."

I took notes of all the important points made. I also carefully observed the manner of each man. How many secret, illegal meetings have they had to decide to take this incredible action? I wondered. Look at Kloss, I thought—red as a beet—nervous hand wringing—can't look me straight in the face....This isn't really happening. It's just a horrible, big joke ....Appeasement never works. It's obvious that the Union is playing a decisive role in deciding the Board's dangerous action. How can they be so utterly and completely stupid?...If they think they've had problems before, they haven't seen anything yet. The power vacuum created by my termination will cause an upheaval that will require years to heal....I finished writing my notes. My thoughts stopped as I asked, "Is that all?"

Scariano replied, "Well, yes, really. You understand ...the Board will allow you to resign...which really would be best for everyone. To resign will allow you to continue with your professional career somewhere else. It won't cause a lot of noise in the community. It would be much less costly. The only one who makes money in law suits are the lawyers....We want to be reasonable, too. If you would care to talk to me, or have your attorney do so, perhaps we can come to an out-of-court settlement....I want to impress upon you two things, though. The Board is most anxious to reach a settlement by the end of next week...and so that it is crystal clear, if you don't resign, the Board is going to terminate you."

Kloss echoed Scariano's remarks. "We are reasonable people. We want to bring this matter to a close. You will soon be able to find another position. *After all*, you've told the Board that you receive a couple of good job offers every year."

I recognized both the eagerness and the sarcasm in Kloss' statement. But I ignored the tone. I simply said, "That is true...but...presidents don't find jobs in July."

I then got up and said as I left, "You'll be hearing from my attorney."

I drove straight home. When I related all that happened in the attorney's office to my wife, she said, "It was as I feared and suspected. It's so utterly unfair and stupid!...Do you think they'll really 'fire' you if you don't resign by next week?"

"No. They can't afford to do that. They'll have to prepare formal charges and set a time and a place for a hearing. The Board's Policies and Procedures require that due process be followed. Hopefully, then, if I choose not to resign I will at last have a chance to respond to their frustrations....But a more pressing question is, 'Should I resign?'"

Two hours of discussion resulted in but one decision. That decision was to get an attorney. James Pappas was the attorney decided on. He formerly worked in Scariano's office. It was common knowledge that no love was lost between the two men. This being so, it was reasoned that Pappas would likely be a worthy adversary to Scariano. He would know Scariano's thinking and style. He would be a fighter.

Thursday morning, I telephoned Pappas' office for an appointment. Late in the afternoon I saw him. When I had related all that had happened I was assured by the attorney that the worst settlement he could see me getting, should I choose to resign, would be a year's severance pay, plus my two months accumulative leave. I also felt confident this would be the minimal case since the Board, in my first year of incumbency, had *fully* paid off an instructor I was forced to demand a resignation from in mid-year.

"For the good of the College I'll resign if you can negotiate that kind of settlement," I said. "It will be bad enough to leave a power vacuum but an even worse problem would be created for the College if my leaving erupts into a controversy."

During the next ten days the attorneys telephoned back and forth, wrote letters back and forth, argued face-to-face back and forth, talked to their respective clients, and reached what looked like a settlement.

My wife and I reluctantly agreed, for the sake of the College, and my professional standing, that six months severance pay, plus two months accumulated leave, would be acceptable for my resignation. In short, I was prepared to act in accordance with long standing academic tradition when a chief executive under contract is asked to resign. I didn't learn until much later how consistent that tradition has been over the nation's 200 year history. Moreover, as a consequence of the Board's contemplated action, I sought employment at nearby Governors State University. There I was offered a $25,000 position as Director of Instructional Development by the University's President who understood and sympathized with my situation.

To my astonishment, as the zero hour approached, Scariano reported to Pappas what the Board's final settlement offer was, "Six months severance pay…period. Take it or leave it. He'd better take it. This Board means business. There'll not be any more counter offers. They'll 'can' him. I need an answer by tomorrow."

"....So that's what Scariano told me," my attorney said.

"My answer is an emphatic N-O! There comes a point in which principles cannot be further compromised. This line, in this situation, has now been reached. My sense of obligation to the institution is now foreshadowed by my obligation to be true to my own sense of dignity and self-respect. I could not respect myself if I were to compromise further....This entire action from the very first has been ill-conceived, dishonorable, unjustified, and uncalled-for. I emphatically will *not compromise* one bit further…no matter what the personal consequences will be to my professional career."

"I can see that you've made up your mind. What do you want me to do?" Pappas asked.

"just make it clear to Scariano that the two months of accumulated leave is the breaking point. If the Board wants a resignation tomorrow night, then I *must* receive these two months of leave which have already been accumulated. The decision is entirely in their hands now."

July 23, 1970 came at last. It was an unusually hot day —indicative of what was to come. The two attorneys talked together to be sure that neither man had more bargaining room left. They were at a stalemate.

"You broke your word, Tony. You said the Board would give Hostrop six months pay, plus his two months of accumulated leave."

"I said I thought they would. Why fight over a lousy two months? If Hostrop chooses to fight, he'll more than eat that amount up in legal fees....And remember, he has to pay these fees out of his own pocket. The Board has institutional resources to pay its legal way. He can't win. Tell him he's beaten. He'll never get another presidency if the Board has to 'fire' him."

Pappas ended the negotiations by saying, "I'll be at home. If you can talk any sense into the Board tonight, telephone me....Hostrop and I will come to the meeting and submit a resignation....Damn it, Tony, the Board's got to be stupid to cause all this trouble over a lousy two months vacation pay the guy's already earned...."

Seven-thirty came. The Board meeting was now in session. It was the first announced meeting I had never attended that I was able to attend.

My wife and I waited for a telephone call from Pappas. At eight-fifteen a call was received.

"Here it is, LeeOna. The Board has come to its senses."

"Dick…Jim. I just got a call from Scariano. He wants us to come to the meeting to turn in a resignation…six months pay, period! I told him that I'd call you to be sure, but I felt certain you wouldn't change your mind....This will be your last chance. They're going to 'fire' you, he says, unless you agree to the six months....What do I tell him?"

"Let me call you back."

"Okay."

"I heard," LeeOna said. "Why didn't you tell Jim, 'no deal?'"

"Because of you. I know how hard all of this has been on you…and the girls. There will be no turning back if I say 'no.' You know that. The good job at Governors State University will be out. My employment there was conditioned on a resignation…not a termination."

"I know, Dick. But we've talked this over. We've decided. We couldn't live with ourselves if we were to further compromise....I just feel so very, very sorry for you. It's so damned unfair. I could....To treat you this way when you've given so much of yourself to the College just isn't right! No one outside of Illinois ever heard of Prairie State before you came here three years ago....Now it has an excellent national reputation due to your national and international recruiting, consultants you have made available to the staff, conferences you have sent staff to, and membership in the GT-70 Consortium which staff have benefited from. It's your leadership that's made it so....Call Jim back....Tell him you can't be bought!"

"Jim…LeeOna and I have talked it over for a final time. We understand the full consequences of my decision. But it can be no other. Tell Scariano it's the six months, plus the two months accumulated leave for a resignation. The two months leave divides us. I already gave on six additional months of severance pay. I cannot make any further sacrifices for the College. I'd rather have those two months than the six months because those two months of unused vacation leave symbolize the 'blood, sweat and tears' that I have put into the College."

"What do you think they'll do, Dick?"

"It's hard to say, LeeOna. My guess is still that they'll 'cave in ' within the next half hour. It makes no sense to not reach a settlement over a difference of two months of accumulated leave already earned. The two months is not a matter of principle for them as it is for us. Legal fees would more than eat up the two months....Unless they are truly vengeful, they'll agree to settle."

"And if they are vengeful?"

"Then I think I'll receive notice of formal charges, along with a scheduled hearing date on the charges."

"You don't take them seriously, then, that they'll 'fire' you tonight?"

"No. They've given hearings on personnel matters on at least four occasions…on Savage just a couple of weeks ago.... Policy covers that. Not to provide due process is inconceivable, though I do concede that the hearing is likely to be only a show, a kangaroo court.."

"I'm not so sure they will even give you that. Who would have ever thought they would have done what they have done? "It seems to me that they almost hate you....But why!?"

"Because of basic, deep-seated primeval psychological reasons....It's the 'barnyard syndrome.'"

"What do you mean?"

"You've watched chickens in a farm yard. When one chicken is dominated by another and is pecked on, others soon join in. Lindstrand and Cooke worked hard to create the illusion before the Board that, like the chicken at the bottom of the pecking order in the barn yard, I was weak…that I could be attacked at will…that I was a loser. The Board used this illusion to justify their attacking me with both spurs, too, because of my resistance to their increasing involvement into the internal affairs of the College.:

"But for what possible reason…I mean the ultimate reason?"

"Power, power seeking by Lindstrand, Cooke, and most Board members"

"Power?"

"Yes, power. That's what it's really all about....But this struggle for power goes far beyond the obvious. It's the struggle by the collectivists for dominance over the egoists....The collectivists are society's mediocritists. The egoists are society's meritocratists. The mediocritists' strength lies in the quantity of their numbers. The meritocritists' strength lies in the quality of their work. The mediocritist has substituted the paternalism of the collective for the paternalism of the egotist. He confuses conceit for self-interest, egotism with egoism....The collectivists are the consumers. The egoists are the producers. The collectivists are the copiers...the 'second handers.' The egoists are the originators—the creators....The collectivists needs people to be happy. The egoist needs work to be happy. To the collectivists his work is hell and his play is work. But to the egoist his work is play and his play is work. The collectivist hates the egoist for this quality above all others. Because the collectivist subconsciously knows that the egoist is not dependent upon other people, but his work, for his happiness, it is his work that he tries to take away."

"You believe this has been true for you at Prairie State, don't you?"

"Yes, I do....Oh, I admit there have been times that I have wondered why I ever wanted to be a college president...but it has been worth it up to this time. But facts must be squarely faced, LeeOna. The egoist will have to find his outlet outside most nonprofit social institutions in the future. He will have to head his own company or business. Or he will have to become a composer, an author, a playwright, an artist, and inventor, a skilled craftsman—or an exceptional teacher, researcher, or a personal services professional....Militant unionists will see to that. As far as the college scene is concerned, the unionists will continue to be successful in collectivizing college campuses... especially two-year colleges."

"Why particularly the two-year colleges, Dick?"

"Because of the needles inferiority complex that so many of the faculty have in the so-called academic areas of the two-year college. Talk to nearly any one among the liberal arts faculty of a two-year college and they will tell you that they either would like to be teaching in a four-year college or university, or that are planning to as soon as they can. Those who aren't are not planning to do so either because of being past forty or because of the lack of a doctorate....Two-year college faculty do not publish nor consult nor do research on any significant scale so they lack the important trappings generally associated with four-year college faculty. This further reinforces their inferiority feelings. Their unnecessary inferiority is further exacerbated by the term 'junior' college itself. That is why 'community' college or just plain 'college' is now the preferred term…it's hard for 'junior' to grow up....Because no one wants to feel inferior, the mediocre and maladjusted faculty—often found in sociology departments in particular—frequently spend their time achieving the one thing that can reflect their status as members of a college faculty."

"And what is that?"

"They organize the faculty into some kind of formal collective bargaining group so as to achieve salaries comparable to four-year college and university faculties....You will find that wherever a collective bargaining agreement exists in a community college the salaries compare very favorably with surrounding institutions of higher education in the area. In short, community college faculties use the common yardstick of annual salary as a measure of their worth."

"Is that really so bad or so understandable?"

"Certainly not of an in itself. Where the rub comes in is the pursuing of false gods. Teaching skill is the highest form of excellence that students can be exposed to during their first two years of undergraduate higher education. The faculty should concentrate on improving the teaching/learning process rather than upon confrontational organization so as to achieve more power vis-a-vis the administration and boards of trustees. Excellence in teaching will be rewarded in increased salaries and prestige. The strength and uniqueness of community college faculties lies in their teaching skills, much better than most four-year colleges and universities with either their huge classes or teaching done by inexperienced graduate students....Prairie State is the worst kind of example of what can happen to an institution which pursues the petty gods of money and power for their sake alone."

"How's that…in particular, I mean?"

Well, getting back to what I was ascribing to the collectivists/mediocritists on the one hand and the egoists/meritocratists on the other will illustrate what I mean as it applies to Prairie State and other colleges similarly situated ....Teacher collectivists are recognized by their need to belong to unions. They defend the need for tenure clauses—in the name of academic freedom. They fight to shorten the length of time to achieve tenure. They favor seniority systems over merit systems and uniform pay over merit pay. They favor student accountability over teacher accountability for student learning. They favor self over peer-group evaluation of their teaching… and they believe student, administration, or community evaluation of their teaching results has little or no place at all on the academic scene....Can you imagine what would happen to doctors or lawyers who tried to be accountable *only* to themselves for the quality of their work?"

"They'd go broke within a month."

"That's right, LeeOna....And can you imagine how many teachers would be out in the streets if malpractice suits could be practically processed by their students against them in the same way as clients process suits against doctors and lawyers?"

"That would be one way of raising the quality of teaching in a hurry."

"It surely would! Because doctors and lawyers are held accountable by their clients, their level of professionalism is much higher than the teaching profession as a whole....You can see why teacher unions, which frequently are composed of large numbers of teachers who would be the first to be ousted under an accountability system, are so strongly opposed to any system of teacher accountability for student achievement. It can be readily noted that the most outstanding community colleges, four-year colleges, and universities do *not* have unionized faculties ....Well, enough on this. I don't think I've ever expressed my thoughts on education so fully to you as I just now have. Our present situation somehow called for it."

"I'm glad you did. I feel better for your having shared these deeply-felt feelings with me....It's nearly midnight now. The Board Chairman has not called you. Let's go to bed. Tomorrow we'll know what the Board officially decided. The only really important thing now is that we have lived up to our highest principles with full knowledge of the possible consequences...and that I have you."

The next morning my two daughters, my wife and I gathered around the radio when we heard the mention of "President Hostrop" on the eight o'clock news. The announcer said, "Last night, at a special meeting of the Board of Trustees of Prairie State College, the Trustees voted unanimously to dismiss President Richard Hostrop. The motion, prepared in executive session, was moved by Trustee Griffin and seconded by Trustee Hannigan. It read, 'For reasons that have already been discussed with Doctor Hostrop, the best interests of the College require that his employment be terminated, and that he shall be relieved of his duties as President of Prairie State College, effective immediately.'"

Ironically, on that very same day, July 23, 1970, the Executive Board of the Commission of Higher Education of the North Central Association of Colleges and Secondary Schools voted a two-year accreditation of the College with a commendation for the adminstrative management of the College!

In my anticipated belief that the Board would be fiscally responsible to the taxpayers of the district by paying my accumulated leave of two months, vis-a-vis the 20-fold cost to the taxpayers by fighting the issue out in the courts, I had prepared a Letter of Resignation which I was prepared to submit for six months pay, plus the two months accumulated leave. The letter read:

I am sure the Board realizes that the past several years have not been the easiest for college presidents - nor their families. This has been as true locally as nationally.

Because the demands of the presidency at Prairie State College have taken their toll, I believe it in the best interests of the College, my family and myself to step aside as President of the College.

I look back over the past three years, however, with great pride and satisfaction. When I arrived three years ago, five occupational programs had been developed in eight years - now there are twenty-five. Three years ago there was only one black professional staff member - now there are ten. A similar increase has taken place within the nonacademic staff. Three years ago the College was housed in rented high school and church quarters - now the staff and students are housed largely in their own interim facilities. The permanent college campus was but a dream - now a highly creative master plan has been developed and will, within the next several years, be taken off the blue-prints and made into a fine three dimensional structure. The faculty, three years ago, was largely unaware of, or used, any method other than the lecture method - now there is great variety in teaching-learning techniques being employed. Faculty governance was largely vertically oriented - now it is largely horizontally oriented. Three years ago Bloom Community College [*Note: this when the college was an appendage of the high school and in only one township—grades 13 and 14* ] was unknown outside of Illinois - Prairie State College is nationally known. As a consequence, out -standing professional staff applicants are drawn from the entire nation.

Minor confrontations have arisen - but the College has never had to be closed because of student activism, unlike nearby neighbors. I have had the opportunity over the past three years to become well acquainted with a number of serious and dedicated students. They, and others like them, have provided my greatest satisfaction. Many of them have stated "without Prairie State College, I would not have been able to go on to college." Moreover, we are now serving more than twice the number of students as when I first came. The College is indeed serving the purposes for which it was intended.

The administrative staff has been overworked and underappreciated - the lot of administrators in higher education these days - but none are finer than those of Prairie State. The same holds true for the superior nonacademic staff of the College.

The eighteen different members of the Board of Trustees, too, have had to share much the same lot as administrators and deserve commendation of both the College and the community. I would be remiss not to single out Dr. Dale Collins for special mention as the Board's first chairman. Local historians, I am sure, will recognize his enormous contributions to the development of the College, as I do.

The pride I have in what has been accomplished over the past three years is enormous. Intrinsic motivation and satisfaction is what has sustained me, coupled with a deep sense of responsibility for helping to guide the College over its roughest, formative years. The job I was hired to do, however, has been done. It is now time for someone else to continue the work which has been started.

I wish the Board and staff well and I wish to give a special final salute to Mrs. Meredith Pommer, my secretary, who has served me, the Board and the College faithfully, loyally and well during the past three years.

[signed Richard W. Hostrop]

It had been my intention upon submitting my resignation to immediately accept the offered position of Director of Media Services at Governors State University at $25,000 per year. I wish I felt it had been possible to submit a resignation—two months accumulated leave pay was all that had separated the Board and me—but to me the recognition of what that leave meant was far more important to me than the six months pay. It represented all the time I had given to the College, with but minimum vacation time taken during my three plus years at the College. It represented an acknowledement by the Board of my dedication to the College. It was a matter of principle.

# PART III

# THE AFTERMATH

# Chapter 16

## The Charges

The day after my dismissal, my family and I left on our long-planned vacation to California. The Board knew of these plans in advance for more than a month. Dismissing me the day before my scheduled vacation was their way of "punishing" me for my refusal to "cooperate" with them by resigning. It was their way to "welch" on my vacation money due me which had already been earned under previous contracts. It was their way to deprive me of 49.6 days of accumulated leave worth $5,532.31. It had been this issue and this amount of money that had kept us from reaching a settlement. Demand for this money already earned was steadfastly refused by the Board during the many months of litigation that followed. I never did get this earned accumulated leave money. Notwithstanding my two-year contract worth $61,000 and my accumulated leave worth over $5,500, the Board never paid me a penny after July 23, 1970. They were not about to provide me with any funds to seek redress. The Board applied maximum economic pressure, knowing full well that they could use taxpayers' money to defend themselves while I had to use personal funds to clear my name, in addition to finding the means to support my family. In short, the Board tried to starve me into submission. No wonder thousands of administrators throughout our land before me have chosen resignation over fighting against unjust "resign or be fired" ultimatums by egregious governing boards. The cards, up to 1970, was *totally* stacked against any administrator whose resignation was demanded.

The Board could not help but know that attorney fees alone would swell well beyond the $5,532.31 that had separated us from reaching a settlement. It is equally obvious that "winning" was more important to them than to responsibly discharging their duties. Not only did the Board ultimately lose the Constitutional issues raised, but the cost to the taxpayers and the College program was outrageous, well over $100,000. Citizens pay too high a price by not caring enough to ensure that only the highest caliber individuals are put into positions of high trust and responsibility as on boards of trustees. Certainly, this proved true at Prairie State.

Three days after my dismissal, the Board of Trustees formally appointed Ashley Johnson as President of Prairie State College. Fourteen days after my dismissal, the Union settled their contract dispute with the Board of Trustees—for $150,000 less than their final minimal demands just prior to the July 23 special Board meeting. Perhaps it was this "saving" that the Board used to justify the expenditures made in summarily dismissing me from my position as President. As Lester Kloss had told me on July 13 in Anthony Scariano's law offices, the Union had approached the Board with an offer to lower its economic demands by $150,000 for my forced resignation or dismissal; just two weeks after my dismissal it did just that. The reader can draw his/her own conclusions if there was any relationship between my dismissal and the settlement reached with the Union, a relationship the Board publicly denied existed.

The Union also got who they wanted as President, Ashley Johnson, M.A., who had been publicly lauded with the hope that he would enjoy an "even more responsible position," in the future at Prairie State College, the only higher position than he held was that of President. Head of the Union and reader of the declaration of undisguised support for Johnson as President was Raymond Lindstrand, the disgruntled administrative intern who I chose not to bring into the administration of Prairie State College, though I did try to get him a job elsewhere. It seems clear to me that Lindstrand's "hatred" for me stemmed from my bringing Richard Jensen into the administration of Prairie State when he was an administrative intern at the same time that Lindstrand was. Lindstrand strongly felt this "rejection" and did everything in his power to "bring me down," and to his credit, he did. There is a lesson to all this. Identify early on in a new position those on the faculty that may cause the most trouble and find out what they *really* want. Often it is an administrative position that such disgruntled persons want. Find an administrative spot of some kind for them in your organization or work ceaselessly until you can find something acceptable to them at another institution. Keep meeting with disgruntled staff until you "win them over," one way or another. I tried hard with Lindstrand early in my tenure, but obviously I did not try hard enough. I should have found some administrative spot for him at Prairie State when I couldn't find something for him elsewhere. This advice is not only for the good of the CEO, but for the institution, overall, as well. Prairie State would not have gone through nearly as much turmoil as it did if I had been able to pacify Lindstrand one way or another.

When we returned from our strained vacation, 23 days later, we found scotch-taped to the front door of our house an envelope. In the envelope were the alleged reasons given by the Prairie State College Board of Trustees for my dismissal.

After we went inside the house and sat down in the living room, my wife asked, "What reasons do they give, Dick?"

I'll read them to you. The first reason listed is, "On April second, nineteen-seventy, the Board of Illinois Junior College District 515 voted to extend Doctor Hostrop's *present* contract to June thirty, nineteen-seventy two. Without Board authorization

Doctor Hostrop prepared a new proposed contract deleting therefrom the important provision which had been in all previous contracts, namely, that he would devote full time to his employment. The purported contract has never been authorized, nor approved, nor ratified by the Board.

"It is true," I said to my wife, "that 'will devote full time to said employment' *was* deleted from the present contract.... However, the Board *did* ratify it...unanimously. I did not even have a contract during my second year at the College. Last year when I placed a sample, blank contract form in Board folders for consideration by Board members that clause was in it. But after the Board's attorney's opinion that we could not restrict dual employment in that City Colleges of Chicago situation with Townsend, it became a moot point. Then, too, Board Policy Number two point one four zero is clear. It states, 'The work week for administrators is a minimum of forty hours on the College premises.' That makes such wording in a contract superfluous.

"I also placed a sample, blank contract form in each Board member's folder again this year. They had their folders at least five days in advance of the Board meeting of April second ....I did not force this form upon them. They chose of their own free will to use the blank contract form provided rather than using one of their own design. I wasn't even in the executive session with them to discuss the contract. This charge seems even more strange when it is realized that my new contract did not even go into effect for over two months after it was approved....Though my first contract at the College was amended, no member of the Board asked that this one be amended. Instead, they permitted me to perform on it beginning July first, and paid me according to its terms on July fifteenth.... It seems plain, they are now attempting to welch not only on my accumulated leave, but on the very contract itself. Moreover, the deletion was innocently made. I would never even thought about it or deleted the clause if Mrs. Pommer had not brought the previous contract into my office on her own initiative and asked, 'Do you want to make any changes in the contract before I put it in Board members' folders?' I had asked Mrs. Pommer to place the previous contract form in the folders of Board members and then she came in with her question. The deletion certainly was not premeditated and I really gave very little thought to the matter at the time. In fact, I returned the form to her with the deletion in less than five minutes. If I had been asked by any Board member for an explanation or asked to agree to void this contract and replace it with the previous one, I would have done so without any hesitation whatsoever even though such wording was superfluous in view of Board policy and Al Franke's opinion on the Townsend matter. The last thing in the world I intended was to be deceitful in any way. This charge shows why it is so extremely important that the accusers give the accused a fair and proper hearing."

"I remember when Kloss telephoned you the day after you received your new two-year contract. He congratulated you on the outstanding job you were doing. I remember your explaining the contract deletion to him."

"That's so. He said he had noticed the deletion before the Board meeting but didn't feel it was an important enough matter to bring it up at the meeting. He fully accepted my explanation."

"Yes, I was in the kitchen with you when he called. I heard what you told him."

"Now, it's given as one of the justifications for my dismissal!

"Listen to the next one....I knew they couldn't leave it out. It's really rankled them....'That prior to, on and subsequent to April second, nineteen-seventy, Doctor Hostrop willfully failed to inform the Board that he planned to author several books, although Doctor Hostrop had formulated such plans prior to seeking continued employment with the Board. Such a project would obviously be incompatible with Doctor Hostrop's devoting full time to his employment. The Board, therefore, concluded that Doctor Hostrop's failure to disclose such information, which had a direct and important bearing on his employment, was willful deception.'"

My wife said, "They have to be kidding!...Scholarship is the mark of an academic man!...You should be commended rather than condemned." Your writing adds prestige to the College as much as it adds to your own prestige. If no one ever wrote, where would that leave education...I just can't understand it. You never write on College time. I know that. You've never had your secretary type any personal work for you. This charge just shows how small-town, small-time, and small-minded they are."

"I've told the Board about my writing. I've pointed out to them that I'm not a golfer or a television watcher. I also tried to emphasize that besides making a contribution to the educational field, my writing is my means of escapism...of relaxation from the pressures of a job that consistently runs well beyond fifty hours a week. I can't think of another avocation more consistent for a college president to have—yet there it is—in bold print. I'm condemned because I write!...Ironically, I'm not even under contract to write any book. I face no deadlines. At least four faculty members have written books and they haven't been fired."

"They're even worse than 'book burners!' They deny you even the right to write a book!"

"Kloss told me in Scariano's office that 'it might be all right for a university president to write books, but not a junior college president.' That's typical of his chauvinism...the junior college wasn't good enough for his son when he graduated from high school. He sent him off to a name university. Now the junior college is just great since his son flunked his freshman year there and now attends Prairie State!"

"What's the next charge?"

"That in negotiating his salary with the Board on and prior to April second, nineteen seventy, Doctor Hostrop misrepresented and willfully delayed furnishing information with respect to the salaries of college presidents in other districts."

"What do they mean by that?"

"I don't honestly know....I never even negotiated my salary. I simply indicated what the range and median salary was for like size community college districts in Illinois. I provided this information in my regular memorandum to the Board just prior to the April second meeting. I remember writing, 'I would hope to receive at least the median salary of like size districts.' I provided the Board, in summary form, with all the salary data available to me at the time. I certainly never negotiated with the Board. I wasn't even present when they decided upon an offer."

"What's the next one?"

"It's somewhat like the previous one. 'That Doctor Hostrop failed to furnish to the Board, prior to the Board's meeting of April second, nineteen seventy, *the Study of Executive Compensation* prepared for William Rainey Harper Junior College, and the *Administrators' Salary and Earnings Data Report* complied by the Illinois Junior College Board, both of which were in his possession prior to the said meeting of the Board. These studies would have been extremely helpful in determining the salary of the President which was then being negotiated, and the Board had no knowledge of their existence.'

"I did have the 'Study of Executive Compensation' in my possession prior to sending out Board folders for the April second meeting. But I never cited any data from that report because the districts cited upon were not comparable nor was the report prepared for Prairie State. Most districts studied were much larger than Prairie State, such as Miami-Dade, as well as being widely dispersed geographically throughout the country. Had I used it, it would have shown that I was grossly *underpaid.* It would have been questionable to have submitted this report to the Board. It would have looked as if I were asking for more compensation than the size Prairie State warranted.

"As for the 'Administrators' Salary and Earnings Report,' I did *not* have this particular report in my possession prior to Board folders being mailed out for the April second meeting. However, the information contained therein was essentially the same as had been provided Board members from other sources....If anything, it just dramatized my under-compensation vis-a-vis presidents in similar size districts with similar education and experience ....The salary offered me for both nineteen seventy/seventy-one and seventy-one/seventy-two was less than what my counterparts were scheduled to receive."

"I can't understand those last two charges...not only because of what you have said, but the admission by the Board that they were derelict....It was *their* responsibility to research what compensation would be appropriate, not yours. Had they done so, they would have found that you have been under-compensated every year you have been at the College as compared to other presidents in similar circumstances."

"The next so-called justification for my dismissal says, 'That during the period of October thirty-one, nineteen sixty-nine to June eighteenth, nineteen-seventy, Doctor Hostrop misrepresented to the Board and seriously mismanaged problems relating to the employment of Mister Calvin Savage.'"

"Oh, no!...You were the only one on the administrative staff who tried to save his job...and you get blamed for trying to help him! The Board overruled Dick Jones to keep him. You tried to keep him....And you get blamed....What kind of people are they?"

"I tried to find Savage another place in the College when Dick Jones refused to keep him in Student Services. But when Savage appealed directly to the Board, Jones completely backed down, leaving me with my mouth wide open....All that trouble just because Jones wouldn't stick to his decision when the going got a little rough. Savage remains in Student Services as a result of the Board's overruling Jones and me....Ashley Johnson's vacillation in the 'Savage Affair' didn't help either."

"What's the next one?"

"That during the period January twentieth, nineteen seventy to May seventh, nineteen seventy, Doctor Hostrop failed to fully and adequately inform the Board, and, indeed, misrepresented to the Board, the use and location of the Store Front Academy."

"What do they mean by that?"

"I don't really know. I'm puzzled by the wording of the assertion. There was no misrepresentation. As I've told you before, LeeOna, the Store Front Academy was the turning point in my relations with the Board. Any halfway intelligent person would realize that the Board's obsession with my efforts to make the College more relevant to black students is a racist concern to the nth degree…I didn't play according to the expectations of the deeply-rooted and unacknowledged racist attitudes of the majority of Board members....As for the location part, I haven't the foggiest idea what they mean. The location is and has always been exactly where I said it was, and at no direct charge to the taxpayers of the district. The same is true for the productive use made of the Academy."

"What's their next ridiculous charge?"

"That during the period May twenty-fifth, nineteen seventy to July tenth, nineteen seventy, Doctor Hostrop failed adequately and competently to deal with the administration of the Black Studies Program, causing both the students at the College and the Board grave concern."

"But that's absurd!...There have been no sit-ins, riots, or any other disturbances....It's not fair to blame you for the leak of your memo to Cooke…it could have happened to anyone. And, besides, it was only a discussion memo at that....The Board's making you their 'sacrificial lamb' to appease black militants. Their attitude on both the Store Front Academy and your memo is the same....Keep the lid on any black student activity…constructive or otherwise."

"There's an even more important point than that. The Board, once again, has given concrete evidence with this charge of infringing upon my rights under the First Amendment to the Constitution....Note the date mentioned in this discharge reason as to *when* I allegedly began to fail to deal 'adequately and competently' with the Black Studies Program....The Board flatly states it was May twenty-fifth. That is the *precise* date shown on my leaked memorandum, the day *before* my Cabinet met!...The Board, therefore, is admitting that I was dismissed just for *writing* the memorandum…that I had no right to *write* it in the first place....The Board, in an earlier allegation, stated one of their reasons for dismissing me was my alleged plans to 'author several books.' In this one they admit I was discharged for merely writing a *discussion* memorandum on extremely important College business....Both reasons are clear violations of a citizen's rights under the First Amendment."

"Those are excellent points. They also denied you your rights to due process under the Fourteenth Amendment by refusing to give you proper notice, charges in *advance* of their dismissal action, and a hearing *prior* to taking such action."

"That's true. Those are sacred rights guaranteed by our Constitution. Not only were these fundamental rights denied me, but the Board even denied me similar rights under their own written Policies and Procedures, rights given to Calvin Savage and others."

"What's the next one?"

"That prior to April twenty-first, nineteen-seventy, Doctor Hostrop misinformed the Board with reference to whether or not the firm of *Perkins and Will* was interested in providing architectural assistance on the proposed dental facility at the College. Indeed, Doctor Hostrop's information to the Board was, on April twenty-first, nineteen seventy, discovered to be totally false, thus causing the Board great embarrassment in their relations with the said firm of Perkins *and Will.*"

"I don't understand."

"I do, only too well. And so does Lester Kloss. And so does the assigned architect from *Perkins and Will* ....It was *I* who suggested that P' and W' do the dental facility in the first place since they were responsible for the first phase of the permanent facility. With Board concurrence and authorization I telephoned the architect and asked him if 'P and W' would be interested and willing to do a project of that size. He said, 'Not really.' Then *he* proceeded to recommend that we employ the same architect that did our maintenance building! I reported this disinterest and recommendation to Kloss. As a result, he sent off a blistering letter to the architect asserting that 'P and W' was only interested in the big projects, and was not helpful with the smaller ones...that this would be remembered when it came time to seek architectural services for Phase Two of our permanent building program....This brought back a sputtering denial by the architect, who then found it necessary to try to save his own skin. He claimed that I had misunderstood him. He telephoned me several days later after talking to Kloss to tell me he would take the blame for the so-called 'misunderstanding.' The blame clearly rests with the architect...and both he and Kloss know it."

"The Board is throwing in everything...*including* the kitchen sink."

"That's obvious. Their charges are scatological. Here's the next one....'That Doctor Hostrop fails to maintain good community relations'"

"They have to be kidding....In the first place, what evidence is available is at least ninety percent favorable. You're out speaking before some community group at least three times a month. In the second place, how could anyone prove or disprove such a sweeping charge....There are over three hundred thousand person in the College district. But, if anything, you could get far more favorable testimonials than the Board could get negative ones. It's no wonder they refused to give you charges beforehand or to offer you a hearing. Their action was pure politics...personal politics so they could adminster as well as set policy!"

"The next one says that 'Doctor Hostrop selectively passes on to members of the Board publications and other information published by the Association of Community and Junior Colleges, the Association of Governing Boards, the Illinois Junior College Board, and other organizations and individuals, which reports and studies contain immense value to the Board.'"

"What reports or information did they ever ask for that you did not provide them with?"

"None. This is a catch all charge. It, of course, is a true allegation. There's not a chief executive in the country who does not selectively pass on information to his or her board of trustees. The Board received about a pound of reading material every two weeks in their Board folders. If I had passed on everything, there would have been at least five pounds of reading material distributed to them every two weeks. This is a charge without any substance whatsoever. Never was I told to add or to delete certain information being provided. I always tried to provide all the pertinent information possible on any given subject, pro and con, so as to aid the Board in reaching intelligent and just decisions. If the Board wants to hang on that charge, they certainly can in a strict technical sense; so could every other board in the country likewise hang their chief executive officer."

"Are there more?'

"Yes. The next one is somewhat related to several others. It says, 'That on numerous occasions Doctor Hostrop has failed to provide or has delayed in providing information requested by the Board.'"

"What information...what dates?"

"The charge is grossly exaggerated, but true in part. *Never* have I failed to provide any information requested. The Board minutes will substantiate me in this. It is true, however, that some information has been delayed longer than I would have liked. But the Board members know full well why these delays have occurred....I have told them they cannot expect maximum administrative performance and efficiency when four key administrators have been tied up in over forty negotiating sessions for over four months with the faculty's Union. It's been a wonder we have done as well as we have. Certainly, no critical information has been delayed or any important deadline missed. It's a charge that is not only unjust, but show how insensitive and naive members of the Board are."

"I don't agree. They aren't naive, they understand the charge all right. It's there just to be sure that in hanging you they add a little more permanence to it....What's the next one?"

"That Doctor Hostrop has repeatedly failed to give his attention to problems of grave concern to the students, the faculty, the community and the Board of Illinois Junior College 515, and has permitted such problems to deteriorate and to become more difficult of solution, thus necessitating the intervention of the Board in problems which are primarily of administrative concern, all to the detriment of the students, faculty and community of Illinois Junior College District 515."

"What events? What dates? What proof? What rot! ...They even admit involving themselves in the administrative affairs of the College....It's just more evidence as to why the Board couldn't and wouldn't give you advance charges nor a hearing. It's so patently evident that the dismissal was politically motivated that it nauseates me."

"Dad, why do the Board members hate you so much?" my 13 year old daughter, Holly, who had been listening along with her 11 year old sister Kristin asked.

"The answer to your question, Holly, is a difficult one at best to answer. The reasons are complex and at your age, very hard to understand. But I'll try to answer. First of all, most would probably not agree with you that they hate me. But in reality most do. As they admit in their own charges, they resent and envy the creative person. And resentment and envy are forms of hate. They didn't want me to write books, even on my own time, under no contract or completion deadlines. They didn't want me to originate internal staff discussion memos without their advance approval. This Board is the classic example of a group rising to its level of incompetency. The job simply was too complex for them to do a competent job. They work at cross purposes against one another, each representing narrow constituencies instead of what is in the best interests of the College as a whole. The Board's charges are far more of an indictment of Board members than of me....There are other more complex reasons as well, but what I've just said is much of it."

"Are there other charges, Dick?"

"A couple of more....The next one states 'that the Board has lost confidence in the ability of Doctor Hostrop as an effective college administrator.'"

"That figures," my wife wryly said.

"The last statement states, 'That the best interests of the College require that Doctor Hostrop's employment be terminated and that he be immediately relieved of his duties.'"

"What's going to become of the College?"

"Appeasement never works. Cooke still will not be satisfied. The Union will not be satisfied. The problems will not go away. They will become worse. Because of my firing, the worst elements within the College and within the community will become more bold. They will demand even more. A time will come when it will be impossible to give them more...and then what?"

"Daddy, what are you going to do about working? Are we going to have enough money to stay where we are?" Kristin asked.

"I'll have more time for writing. I'll also be available for consulting work....I'll be looking for another presidency. Your mother will continue to teach at James Hart Middle School. You needn't worry. We'll do just fine."

"We'll be suing the Board, too, for breach of contract," my wife added. "Eventually there will be money from the breach. But, most importantly, because of your father's splendid record at Prairie State, he undoubtedly will be offered another presidency within a year."

"We want you children to go about your business just as if nothing has happened," I added.

"You can be proud of your father. He's standing on principles. He could have accepted fourteen thousand dollars. But he didn't. This difficulty can serve as a lesson. That lesson is to always stand on principles. Your father was unjustly dismissed. His record at Prairie State resulted in the College becoming nationally recognized for its excellence in many areas ....Your father in on the AAJC's Commission on Instruction and Learning....Your father is Vice-Chairman of GT-70, a group of innovative colleges that help one another to achieve greater excellence for their students and communities....Your father's two books have been widely acclaimed....We have little to worry about. We would have something to worry about if your father lacked integrity...if he didn't fight for what is only just...if he wasn't a strong person...if he didn't have the drive and skills that can compete in the market place of ideas."

"I'd better go downtown to see Jim Pappas."

"All right, Dick. Good luck!"

James Pappas welcomed me back from my family vacation to California and reported that the Board had denied him a request for a hearing on the reasons for my dismissal.

"Where do we go next, then, Jim?"

"What about seeking relief in the federal court? There seems little question that my civil rights were violated."

"I'm skeptical about taking that route...particularly because you are an administrator."

"That shouldn't make any difference."

"Well, certainly we can look into it....But I'm not aware of any administrator getting any relief in a civil rights case. I'm afraid the court would look upon your case as simply a breach of contract suit."

"I can't believe that there haven't been a number of administrators who have filed civil rights cases. Many dismissals of administrators would have to revolve around Constitutional issues it seems to me from situations of which I am aware. There must be precedences for my kind of situation."

"That may be, Dick. But as I said, I am not aware of any specific cases off hand."

"I was an American history minor in college, Jim. I've recently carefully reviewed the *Bill of Rights*. It's my judgment that my rights under the First, Fifth, and Fourteenth Amendments were clearly violated. To me, my dismissal is a Constitutional issue above and beyond a mere breach of contract issue."

"That's probably so....You certainly were restrained from exercising your freedom of speech when the Board denied you a hearing....How in hell can the Board know if the charges against you are valid when you were denied even the right to speak to them about the charges!"

"Worse than that, in their charges, they admit that I was dismissed for allegedly planning to author several books and for writing the Black Studies confidential discussion memorandum to my Cabinet....Those certainly are First Amendment violations."

"No doubt about it."

"The Fifth Amendment, in substance, assures that an individual is innocent until proven guilty."

"That's true...and the Board knifed you, quartered you, and hung you without benefit of trial or jury."

"They lynched me all right. Clause Three of the Fourteenth Amendment says, 'Nor shall any state deprive any person of life, liberty, or property, without due process of law.' As I understand the Fourteenth Amendment, actions taken by state governments, state officials, *and* local governments and officials must conform to the principles of due process of law....Countless federal court decisions similar to mine have concluded that an individual is entitled to charges, counsel, a hearing, and an impartial body to render a decision *prior* to any final action being taken."

"You make good points, Dick. But you aren't a teacher. The court may view your case differently because of the close working relationship between you and the Board."

"The *Bill of Rights* doesn't say you give up your rights as a citizen just because you change your status from a teacher to an administrator...but I'm not a justice of the Supreme Court."

"You can count one thing, Dick. I'll fully explore the civil rights route. But in the meantime, I'll file a breach of contract suit in the state court...which can take up to seven years to reach trial. This suit won't hurt you should we decide to also go into federal court."

The wheels of justice move slowly. Illinois state courts are jammed with personal injury suits, largely resulting from car accident cases. Other "personal injury" suits, such as breach of contract suits, are jumbled together with these accident cases.

In due time, after research on his own, James Pappas was persuaded to file a civil rights suit in the United States District Court, Northern District, Eastern Division...located in Chicago. Thus two suits were filed...a breach of contract suit in a state court and a civil rights suit in a federal court. Later, the breach of contract suit was dropped from the state court and, in essence, combined with other issues in the federal suit.

## Chapter 17

# The Effects of Appeasement

At the first Board meeting in August of 1970 Ashley Johnson, the new Prairie State College President, was "baptized." Benjamin Cooke and his supporters were out in full force. Lester Kloss and other Board members, with William Jackson excepted, were astonished at the sea of salt and pepper faces waiting for them in the Board Room. With me gone, it had been expected that there would not be any more Board meetings in which Cooke would confront the Board. They had counted on my dismissal to prevent just what they now saw. Though there were more "pepper" faces than "salt," the white students and citizens present more than matched their black associates in volume and in rhetoric. As was the custom of the Black Studies Director, he served as the spokesman of his entourage and they served as his echo.

"Yes, Mister Cooke," Chairman Kloss said in non-disguised irritation after the minutes of the previous meeting had been approved.

"I don't think it's right for Mister Johnson to use 'white mail on me.'"

"What are you talking about?" Kloss asked.

"He told me that if I wouldn't try to hire Mister Yamashita part-time this fall in my art program, he would recommend a proper budget for the Black Studies program....That's white mail!"

Cooke's entourage broke into loud guffaws at this.

"Well, I can tell you...I'm not going to let my integrity, better judgment and success of the program be jeopardized due to the personal animosity Mister Johnson has toward Mister Yamashita.!"

"I don't have any personal animosity toward Mister Yamashita!" Johnson asserted.

"Then why do I see this budget print-out," Cooke demanded, waving a thick document before the Board that was handed to him by a black student in the audience, "with twenty thousand dollars less than what you said you were going to recommend!?"

"I told you that the budget isn't set. What you have in your hand is only a tentative budget. It's not a final one."

"I don't understand why in a tentative budget you don't have the amount you say you're going to recommend....It sounds to me like it's a 'put-on'!"

Cooke's rooting section joined in a cacaphony of support for their fiery leader. "Right on!...Tell it like it is!..."

"Now the history Department is trying to take the Afro-American history program away from us....We won't have it!"

"Right on!"

"The Ethnic Studies program needs an adequate budget!"

"Right one!"

"The Ethnic Studies program serves all students...not just black students. Therefore, money invested in this Department has a greater overall effect than does money invested in any other area!"

"Tell it like it is Brother Cooke!"

"It would be refreshing to work with a Board and administration for a change that takes a realistic, modern and mature approach to critical areas of education and social concerns before they become overwhelming problems."

Cooke sat down to a thunderous standing ovation by most of those assembled in the orchestrated audience.

At six in the evening, on the first Thursday in September of 1970, over 50 adults and students met at the house of one of Cooke's supporters. The students wore green and brown dungarees. Yamashita directed the painting operation which changed the dungarees into military-like "camouflage uniforms." The results were spectacular. Forty young black men and women from the BSU *were* the medium—and the medium was the message. They were "guerilla fighters." Their instructions for the Board meeting less than an hour away were given by Black Studies Director Cooke and Trustee William Jackson. Each "actor" knew his/her assigned role well for the guerilla theater to shortly follow.

When six of the seven Board members entered the Board Room it was empty except for the Union observer and two press reporters. Board members sat down in relief. Briefly thereafter, Ashley Johnson came out of my former office to join them. He saw the empty chairs in the Board room and sighed with relief as he took his place beside the Board Chairman. The Chairman leaned over to Johnson and whispered, "Good work."

"Thanks," Johnson said smiling.

Trustee Williams sauntered into the Board Room carrying his Board folder and budget print-out shortly before the meeting was scheduled to begin. Shortly thereafter, Jackson's adult followers took seats in the audience.

Chairman Kloss frowned as did other Board members. Kloss leaned over to Johnson once again and said, "At least there's only a couple of blacks."

"Yeah." Johnson answered uneasily.

At precisely 7:30 P.M., 40 uniformed black students marched stonily in the Board Room. They occupied every seat. A dozen were without seats. The standees lined each wall of th Board Room. Board members were completely surrounded by a wall of unmoving black faces. When they had stationed themselves like rigid statues, Cooke marched in alone. He was dressed the most dramatically of all. He carried a black riding crop. He wore a black beret. He wore dark gold one-way mirror glasses with black rims. He wore black slacks and a black guerilla military tunic....The star of the theater had triumphantly arrived!

Hushed, heavy silence rested unsteadily in the air when Chairman Kloss uneasily opened the meeting. Ashley Johnson was ashen white. The two women Board members looked as though they were nearly suffocating. All trustees had to feel threatened and defenseless—that is, all except Trustee Jackson, the "Conductor," the "Orchestrator." Jackson appeared to be immensely enjoying the discomfort of his fellow Board members and the new President.

With the roll call completed, and the minutes read and approved, Cooke rose to be recognized.

"Yes, Mister Cooke?"

"Two weeks have passed. You haven't increased the budget for the most important program on this campus....You have me down for thirty-seven thousand dollars. That's twenty thousand less than I had this past year!....I've told Mister Johnson and I've told you that I need at least sixty-nine thousand dollars!"

"Mister Cooke...you are out of order. This is not a budget hearing meeting. This is a regular Board meeting. If you want to speak about your budget, then you'll have to wait until September seventeenth," the Board Chairman tried to explain.

"Wait until September seventeenth? No! I can't even hire my Afro-American history teacher because you don't have any money in the budget for him. I can't wait until no September seventeenth....Speakers and artists have been contracted for ....My budget has to be settled here...tonight!"

"You are out of order, Mister Cooke!"

The pre-arranged signal for the students to go into action was when the Black Studies Director sat down. When he sat down the students began an uproar. They sat and leaned on the Board table and began to direct specific questions to individual Board members and President Johnson.

"Define bedrock budget!" Chairman Kloss was directed to answer by Melvin Frelon, the BSU President.

"You're loaded with money!" *Prairie Statement* Editor Rose Gallo told Vice-Chairman Hill while at the same time stabbing a finger at her.

"Why are you trying to demasculate the Black Studies Program?" demanded Floyd Harris of Trustee Hannigan... Hannigan didn't understand the question.

Each Board member and the new President had about five students assigned to him/her. One question rolled upon another. Voices of the students increased in tempo and decibels. After ten minutes of this verbal barrage, Trustee Mellecker could take it no longer. She moved that the meeting be recessed until quiet was restored.. The motion carried 6 to 1 (Trustee Jackson the lone dissenter).

The students kept up their demonstration—shouting epithets, asking questions they demanded answers to, asking rhetorical questions, chanting slogans. It was over 70 minutes later before reasonable quiet was restored. When the Board moved back into regular session, Turner Rouse stood up from the audience to be recognized.

"Yes, Mister Rouse, Chairman Kloss said in acknowledgement of the Park Forest elementary school principal.

"You, sir, have shut off all meaningful response from the community!"

"Not so, Mister Rouse. This is not a budget hearing!"

"That has nothing to do with it. Citizens have come her tonight to seek answers to legitimate questions and you have shut them off. It's inexcusable!"

The audience shouted to Cooke's swagger stick as he led them in a chorus of "Right on!"

"The administration," Rouse continued, "has failed miserably to give adequate answers to legitimate questions Mister Cooke has raised in a democratic way."

"Right on!"

"Members of the Board are seeking to play administrator by forming a dangerous committee structure to conduct its business!"

"Right on!"

"As a taxpayer in this district, I want to be informed of all budget requests that have been made to the Board and the administration....And, I want to be given complete, detailed information on those items that have been cut out of this year's financial plan!"

"Right on!"

"Mister Rouse!" Chairman Kloss exploded. "Now *you* are getting into administration. The Board is under no obligation —legal or otherwise—to give you that information. We will have final budget recommendations in two weeks. We will have a hearing then. We will have the tentative budget available for inspection…but we are not required by law or common sense to give you what you ask."

Disdainful hoots followed the Chairman's remarks. When the audience quieted, the ultra-liberal white elementary school principal continued.

"My principal concern here tonight is restoration of the thirty-two thousand dollars in Black Studies items taken from the tentative budget by the Board's three-member financial resources committee headed by Mrs. Hill."

"Right on!"

"What percentage cuts were made in the tentative budget for other academic programs besides the Black Studies program?"

"Right on!"

"That is not pertinent, Mister Rouse," Doris Hill insisted. "We must evaluate each program on its merits."

Loud, angry guffaws followed.

"On the contrary, Mrs. Hill, all college budgets should be cut equally!"

"Right on!"

When pesky Turner Rouse sat down to cheers of support, theatrical Cooke rose once more to speak.

"Let's review the eight objectives established for the Ethnic Studies program a year ago…particularly number six .... The program is supposed to serve as a resource for forums, workshops, lectures and concerts....I was hired to do just that! How can I do what I'm supposed to do when I don't have any money to do it with?"

"Right on!"

"As but one example, the Ethnic Center's art program has been highly successful. It needs to be expanded, not curtailed!"

"Right on!"

"I've been hampered for lack of money to work on the black community's school 'pushout' program."

"Right on!"

"Both whites and blacks have been culturally deprived and scarred because of four hundred years of slave psychology ....The whites are scarred by an illusion of superiority and blacks are scarred by a delusion of inferiority!"

"Right on!"

"The Administration and the Board talk out of both sides of their mouths...on the one hand you say you endorse the Ethnic Studies program but on the other hand you've taken up a surgical knife to carve it right out of the budget!"

"Right on!"

Flamboyant Cooke took a seat beside Turner Rouse to more thunderous applause and cheers. When quiet was restored some five minutes later, Cooke rose alone and walked out of the Board Room. Then Rouse rose and walked out of the Board Room alone. That was the signal for the entire entourage to follow suit. It was now nine-thirty. The Board Room was now as quietly opposite as it had previously been loud.

Trustee William Jackson broke the near silence by stating he wanted to formally protest the way Board members had handled the visitors. He said, "The Board is cutting off meaningful response from the community in shelving budget discussions for two weeks....I'd like to have a special meeting of the budget committee so that *all* Board members are fully informed at how the tentative budget has been arrived at....I think we all need to have this information so that we can be better able to answer questions from the community."

"We only received four or five questions at last year's budget hearing," Shirley Mellecker commented.

"This time it might be different," Jackson knowingly observed.

The next issue of the *STAR* reported that Cooke had carried his budget dispute with the College Board to the State Junior College Board. There also was a Letter to the Editor in the *STAR* from Board member Jackson:

> Unfortunately, recent news articles have given false impressions and interpretations of Board activities at Prairie State College.
>
> I feel a duty to give more accurate, factual and proper interpretations so that the public can be assured of a balanced picture.
>
> The recent articles are more fiction than fact and are more slanted than straight.
>
> I attended the September 3 PSC Board meeting from about 7:25 P.M. until 2:15 A.M. on September 4.
>
> I saw citizens and taxpayers try to voice their concern about problems at Prairie State College.
>
> I saw the Board Chairman deny citizens and taxpayers the right to question the activities of the Board by limiting the subjects for discussion from the floor.
>
> I saw the Board Chairman recess the meeting rather than entertain or answer the legitimate concerns of the citizens.
>
> Then, oddly, I saw Board members try to answer and explain away these same questions for about 70 minutes while in recess. All this while in recess and off the record!
>
> The performance by the Board simply requires further examination. Why the Chairman refused to hear questions about the budget and finances at a public, tax-supported college? Why they refusal to discuss financial matters in an official Board session. Why was there a prolonged discussion, all off the record?
>
> This entire affair reminds one of the story of the kind-hearted she-elephant who accidentally stepped on a young mother partridge. While thrashing about in repentent remorse, the she-elephant uncovered the nest of the partridge with several unhatched eggs. In her primitive wisdom, but blinded by guilt and grief, the kind-hearted she-elephant decided the only way to make amends would be to personally hatch the orphaned eggs of the recently demised mother partridge. And

so, she diligently sat about her self-appointed task with predictably crushing results.

In this light, one wonders why are slanted impressions printed regarding the appearance and statements of citizens at a public meeting?

While such erroneous articles do not impress or delude the sensible citizens of this district, such fictional editorializing does signal every malcontent within 2,000 miles that there is a chance of some "action" at Prairie State College.

A more responsive attitude by the Board and more factual reporting could help prevent potential misunderstanding and doubts about the Board's methods of operation.

In comparing the annual budget bash with that of last year, it might be said of the PSC Board as was said of the Bourbons: "They learn nothing and forget nothing."

The public should be aware that the policy and procedures of the College and the Open Meetings Act protect the rights and the citizenry to attend meetings and question any and all actions of the Board of the College, at any time.

Speaking individually, I applaud and encourage citizen's interest in the activities of the Board and College.

Since I have nothing to fear or hide, and believing that all my actions have been and are in the best interest of the College, I welcome the question and concerns of the citizens of the district.

I encourage my fellow Board members to adopt a similar attitude.

How will the public otherwise satisfy itself concerning the great unsolved questions and dilemmas revolving about Prairie State College?

Think about it, will you?

William Jackson, PSC BoardMember

Because there were more than 100 Cooke supporters present, the next Board meeting on September 23, 1970 was transferred from its regular meeting place to K-0-2. This was the same meeting place where the pre-planned kangaroo court session to attack me had taken place just two months earlier which later proved to be the catalytic agent for my dismissal.

Jackson, Rouse, and Cooke had worked out an aggressive plan for the Board meeting should the Board not accede to the budget demands of the Black Studies Director. They never had to carry it out though.

Ashley Johnson, the now Prairie State College President, had a prepared statement regarding the Ethnic Studies Program which he read after dispensing with his other budget recommendations. With trembling hands and a quivering voice, he declared:

> The decision to submit an Ethnic Studies budget which varies minimally from the one originally submitted by Mister Cooke to the Board Budget Committee is based on the fact that I give strong support to the concept of educational efforts which are directed to those groups within our society who generally, for a combination of reasons, have not been able to assume a role in society based upon and commensurate with their God-given abilities.

Board members sat in stunned silence. Even Trustee William Jackson had not expected Ashley Johnson to take the stand he did. Other Board members felt betrayed by their hand-picked President as evidenced by what followed. At last, Trustee Mellecker made a motion on the budget, "I move that the budget be approved as submitted by President Johnson with the exception that the Black Studies program be fifty-six thousand dollars rather than the recommended sixty-nine thousand dollars."

It was an eerie night. The audience waited in hushed silence to see who would second the motion. No one did. Trustee Doris Hill didn't because she wanted the program budgeted at a still lower figure—$39,000 that her three-member committee had recommended. None of the others seconded the motion.

"The motion fails for lack of a second," the Chairman declared. "Is there another motion?"

Trustee Jackson said, "I move that all the budget recommendations presented by President Johnson be approved."

Trustee James Griffith seconded the motion. He had been the one to urge the appointment of Ashley Johnson as President in the first place. He had recognized in Johnson an opponent of mine and had believed that in Johnson there would be strong faculty support for Johnson's promotion (but it was soon proven that Johnson could not keep faculty support). Griffith couldn't now let Johnson down even though he must have had misgivings about the recommendation to fully fund the request by the radical Benjamin Cooke.

"Because this is a monetary matter, will the Secretary please call the roll," Chairman Kloss directed.

"Mister Kloss?"

"Aye."

"Dr. Griffith?"

"Aye."

"Mister Porter?"

"No."

"Mister Hannigan?"

"Aye."

"Mrs. Hill?"

Silence.

"Mrs. Hill?"

"No."

"Dr. Jackson?"

"Aye."

"And I vote 'No,'" Secretary Mellecker said.

"The motion carries four to three," Chairman Kloss announced.

Jubilation broke out. Those in the large, drab, lecture hall got to their feet, then cheered and clapped. Most of those present rushed over to Cooke to warmly congratulate him on his hard and well fought orchestrated victory.

While the jubilation was taking place in the audience, an animated private discussion was taking place among Kloss, Porter, Hill, and Mellecker. The Board Chairman asked for quiet so that the Board could carry on with its other business. Members of the audience began to file out when Shirley

Mellecker asked to be recognized by the Chair.

"Yes, Mrs. Mellecker," Chairman Kloss said in the knowledge of what the fiery trustee was going to announce.

"I can no longer remain a part of the Prairie State College Board. To do so would be against the principles I believe in. I believe in fiscal responsibility....Not only has the Board this night approved an unwarranted amount of money for the Black Studies Program, but it also has acted on a recommendation to defer to the building fund over one hundred thousand dollars needed to build the permanent campus....I believe in balanced funding for all academic programs and living within one's income. The action by this Board tonight is in violation of both of these principles. I shall not be a party to such a fiscally irresponsible act."

The resignation was accepted only after a considerable attempt to dissuade the outspoken Board Secretary. But she remained resolute in her decision in spite of these attempts.

Just when the Board members were again ready to leave, a second unexpected announcement was made. This time it was from Thomas Porter who simply said, "I herewith submit my resignation as a member of the Prairie State College Board to become effective immediately."

Porter refused to go beyond the statement, nor would he answer with anymore than a smile or an innocuous word or two when pressed for his reasons. His reasons were obvious.

Ashley Johnson was more stunned than anyone. All this had taken place exactly two months to the day after my dismissal in which Board members were so certain that by dismissing me that "Nirvana" would come to Prairie State College. It was obvious to all but the highly vocal and militant Cooke and his entourage of about a hundred students and radical adults that quite the opposite had happened. The College had never been in a worse condition. I had stood up for the very things that Mellecker and Porter had resigned over, yet, they too, had voted for my dismissal in their shortsightedness.

The white backlash that followed the budget adoption was more intense, widespread and long-lasting than any that had ever before been directed against the College. Johnson was personally attacked. The Board was attacked. I was extolled. The public at large had before believed that I had been made a "sacrificial lamb" to appease the Black Studies Director and his few but highly visible radical supporters within and without the College; a hard-core group that gave the appearance of being much larger in size than their actual numbers warranted. The public at large no longer *believed* I had been made a "sacrificial lamb," they were now *sure* it was true.

Letters and telephone calls poured into the College and the *STAR* charging a "selling out" of me and also "giving in" to black and white militants. The "silent-Americans" of the College district weren't so silent anymore. They had followed the accounts in the *STAR* and had been angered at the tactics of Cooke and his followers. But none of them in a thousand years had believed the Board would give in to their militant demands. After all, with the exception of Dr. Jackson, the Board was composed of members "just like us." Many now believed that my firing and the "giving-in" to Cooke was all wrapped up together in one placating package. Most Board members that voted for the "Cooke Budget" did so in embarrassingly support for the poor choice they had to now live with by putting Johnson in my place. Johnson had made a colossal mistake in *really* surprising the Board with his budget recommendations.

Not only was there a whip-like backlash from the community, the resignation of two Board members but Johnson also had completely misjudged the mood of most of the faculty. He had based his recommendation on the solid support he knew that he had of Professor Raymond Lindstrand and the support he knew he was bound to receive from the Social Sciences Department. There were no other departments that were as enchanted with his budget recommendations since they believed not only were the funds misplaced but they, themselves, felt pinched for funds. Those silent people on community college faculties—the career program faculty—were the first to openly criticize the budget presented and approved by the Board. Widespread disenchantment and criticism of the new President began to spread through this faculty segment and to spill over onto the Liberal Arts faculty—especially in the science and math departments. Though these instructors were perhaps not as articulate as the Social Sciences faculty, what they had to say was plainly understood....Johnson and Board member Griffith had grossly overestimated the faculty support for Johnson. Johnson learned the hard way as so many presidents before him have learned—the Social Sciences faculty, as vocal as they often are for radical causes, do not speak for the faculty as a whole.

Following on the heels of the adoption of the 1970-71 College budget, and the tumultuous outpouring of resentment by substantial elements in the white community, was a formal request by my attorney for a *detailed* listing of evidence in support of its reasons for my dismissal, along with a "full and proper hearing." Both requests were rejected by the Board. The rejection brought forth further protests by those who had been too stunned when my dismissal was first announced to react. Many citizens had thought I had been dismissed for mismanaging funds or for moral turpitude since the Board refused to publicly reveal its reasons for my dismissal. But with the demand for particulars and a hearing, the general public now realized something was very much amiss. The chaos that was reigning at the College, which had culminated in the dramatic resignations of two Board member, only two months to the day after my summary dismissal, caused widespread comment throughout the College district.

Just two months after ascending to the Presidency, Johnson was being bitterly attacked both from within and without the institution. Most Board members, subconsciously at least, must have realized they had made a horrible mistake in dismissing me. It was not me. It was the situation—most of which was caused by the very Board that had dismissed me. Appeasement had not accomplished anything. On the contrary, the situation at the College had never been worse. Only the Social Science Department, some members of the English

Department, and, of course, the Black Studies Director, were happy over the budget outcome. Externally, only a handful of radicals who were followers of Board member Jackson were jubilant at the success that they had helped to achieve to increase the Black Studies Program budget. The black community was divided—not over the amount of money allocated for the Program but over its priorities—many black community members believed that expensive lectures and concerts should give way instead to providing tutorial help and remedial aid to educationally handicapped students.

Johnson no longer was popular. This had to bother him. Approval by others was very important to him.

Bickering among the faculty increased. The College inexorably was dividing up into two camps. In the one camp was most of the faculty from the technical/vocational areas along with most of those from the Sciences and Math Departments. The other camp was composed of most of the members of the Social Science and English Departments. The split was between the conservative faculty and the liberal/radical faculty. Racial division and polarization also occurred with most black staff and black students aligning themselves with the liberal/radicals as did a small number of liberal/radical white students. Most white students didn't align themselves with anyone. They were indifferent and apathetic to the social upheaval taking place within the College, all of which was but a mirror of society as a whole.

The struggle took many forms. Basically, resistance set in on committees and within departments by the conservative faculty as to giving further special favor or treatment to black students. The conservative faculty refused to lower academic standards or to give a passing grade by virtue of classroom attendance alone. This was in marked contrast to many of the liberal and all of the radical faculty who continued to make concessions as perceived retribution for the many score years of historical slavery and oppression that African-Americans have endured in our country—(further "paternalism?").

Strong vocal resentment was increasingly expressed, also, by the conservatives over the appearance of black speakers and artists. The conservative faculty's complaint to one another was that similar funds had not been allotted by the new President for white speakers and artists. Of even greater consequence to the conservative faculty was the fact that such appearances were like salt in the wounds of their inadequate budgets due to the College's failure to pass three consecutive tax referenda. They reasoned that the College would never be able to achieve a tax increase because to the average taxpayer the use of tax funds for such appearances was indicative to them that the College had no real need for additional funds. Also, among many of the conservative faculty and the public at large, deep-rooted racist feelings still existed.

The liberal and radical faculty, on the other hand, believed that the money allocated by Johnson to the Black Studies Program was right and proper. They hailed Johnson as one of their own and talked among themselves in indignation and self-righteousness about what they perceived as the racist attitudes of the technical/vocational faculty.

The polarization sharpened in the weeks ahead and Johnson found himself right in the middle between the two camps. He did not like this feeling. Neither could he have liked the feeling he must have had as to how Board members must have felt toward him, nor of the sharp criticisms directed against him in "Letters to the Editor" in the *STAR*.

A bitter battle developed within the Board over the method to be used to appoint the replacements for Mellecker and Porter who had precipitously resigned over the budget on September 23, 1970.

At the first meeting in October the battle was joined over the two new Board members, just as soon as the criteria for the selection process was approved.

"We'll have our new Policies and Personnel Committee headed by Mrs. Hill screen the candidates and recommend two names to us," Chairman Kloss stated.

"This is too important a decision to be left to a committee .... The Board, as a committee of the whole, should do the screening," Trustee Jackson insisted.

"It would be too unwieldy and take too much time of too many people," Hill countered.

"I'm not too busy!" Jackson retorted.

The Chair ruled in favor of proceeding via the committee approach...an approach Dr. Dale Collins wisely resisted during the three years he was on the Prairie State College Board.

Doris Hill promptly subdivided the six member committee (three Board members, one faculty representative, one Student Senate representative, and one administrator) into a three-member subcommittee. The subcommittee consisted of Hill for the Board, Dick Jensen for the Administration, and my long time nemesis Raymond Lindstrand for the Faculty. The subdividing of the committee brought forth further strong protests from Jackson, even though he had to be pleased to see Lindstrand on the committee.

The Policies and Personnel Committee submitted a news release to the *STAR*, asking that nominations be submitted to the committee in care of the College. An interesting "Letter to the Editor" appeared in the *STAR* the Sunday morning following the first Board meeting in October. It read:

Dear Editor:

Our district citizens are aware that Mrs. Doris Hill now heads a three member Policies and Personnel Committee empowered to fill two recently vacated Prairie State College Board of Trustees posts. These two key positions involve critical personnel, policy and curriculum decisions which can determine the future of our young area Junior College.

Prairie State serves a unique function in its potential for higher education, vocational training, job opportunities in local industry, liaison for educational informational exchange between local school districts, feeder programs aimed at Governors State University, and for improved community race relations through its Ethnic Studies Program.

The crisis at Prairie State College has been heightened by the recent firing of Dr. Hostrop, although the College leadership is now in the capable hands of Mr. Johnson.

More serious events have been the strained board-faculty relations shown by the recent teachers' strike, severe budgetary cuts of unfair proportion which were recently reconsidered, and failure of tax issue passage which reflects poor College-Community understanding.

Mrs. Hill has been personally involved in the following occurrences:

1. Attempts to restrict or limit press coverage of Board meetings and muzzle Board members.

2. Attempts to allow illegal proxy votes on Board decisions.

3. Attempts to institute a restrictive Committee system (she is a member of TWO committees) which excludes full Board involvement in decision-making.

4. Attempts to create damaging and unnecessary budgetary cuts in the areas of athletics, health, ethnic studies and other departments. Her recommendations were subsequently overruled by the full Board.

5. Incorrectly presenting budgetary data at a public meeting.

Mrs. Hill's unfortunate involvement in these events raises a legitimate question about her membership on, let alone chairmanship of, the Policies and Personnel Committee.

Gerard Kharam

A special meeting of the Board was called at the insistence of Dr. Jackson. During the meeting he took up where his colleague, Gerard Kharam, had left off.

"I protest that the whole Board is not involved in the selection process of new Board members....This task is too important to leave in the hands of one or two Board members ....You, Mrs. Hill, won't even release the names of those who are being considered for these vacancies," Jackson charged.

"I am Chairman of the Policies and Personnel Committee," Doris Hill defensively began. "I have been asked to take on this responsibility by the Chairman of the Board....All the Board members will have a chance to vote on the recommendations of the Committee."

"You miss the point entirely....We don't know who you *haven't* recommended that have been put forth for consideration

...I, for one, know that both Turner Rouse and Herbert King have asked to be considered....I'm not saying anything about other applicants but I do know both of these men would be outstanding Board members... Mister King received the most votes of any of the losing candidates at the last election....Mister King is deeply involved in the whole area of human rights in his work in Chicago. His expertise, frankly, is badly needed by this Board, College and community....What about them?"

"They will be considered along with other candidates, Doctor Jackson," Doris Hill limply answered.

"Yes, but are you going to recommend them for consideration by the Board as a whole?"

"That remains to be seen!"

"That's the whole point!...You are deciding who the Board will consider or won't consider....If you don't submit their names, the Board won't even have a chance to consider them!"

"We have to have a reasonable method to handle all the applicants. Such screening saves all our time," Lester Kloss stated.

"How can anyone here put so little weight on a matter of such importance?...You're deliberately stacking the deck!"

"That's simply not true!" Kloss hotly retorted.

"Well, I can tell you this," Jackson continued, "if these closed interviews continue, and Board candidates are eliminated by the Committee without disclosure of the criteria used to make such eliminations, several citizen groups are going to protest the entire decision....They are threatening to take this issue to the courts to ask that the committee selection process be declared illegal."

"Our process is fair and reasonable," Kloss answered unsurely.

"Well...we'll just have to see about that, won't we?"

At the second regular Board meeting in October 1970, two new Board members were seated (but not Rouse and King) until the next regular Board election in April. The vote was 4 to 1 to seat the candidates proposed by Doris Hill and her committee. But the controversy over the seating of the two new Board members resulted in a further loss of respect for the College.

Many other problems resulted from the Board's appeasement of militants from within and without the College. Jackson publicly threatened to take legal action against his fellow Board members over the way they had selected the two new Board members. He charged them with having violated the Illinois Open Meetings Act in arriving at their decision. Jackson as much admitted that my dismissal had likewise resulted from illegal meetings and violations of the Board's own Policies and Procedures. He further charged his fellow Board members with illegal actions pertaining to various expenditures of College funds. Finally, Jackson threatened several Board members with a libel suit over alleged aspersions on his personal reputation.

Former Board member Shirley Mellecker publicly chastised Anthony Hannigan for having improperly involved himself in administration by his end run in initiating the disastrous football program.

Then a physical altercation ensued between a black adult student and her teenage son on the one side, and the white College Bookstore Manager and a sales clerk on the other side, over the issue of a supposed stolen book. A law suit and a counter law suit resulted. Racial tension on campus considerably heightened.

A year after my dismissal, Calvin Savage's resignation was asked for and accepted over alleged "requests for favors" of female students in return for financial aid. Savage denied the charge, but nevertheless resigned.

Eighteen months after my dismissal, at mid-year, Benjamin Cooke resigned in a storm rather than face an evaluation of his directorship and the program he headed. He feared what I foresaw as needed—a complete restructuring of the Black Studies Program as outlined in what was now my famous discussion memorandum of May 25, 1970.

Less than three years after my dismissal, a rumor circulated widely that Ashley Johnson was given the choice of resigning or being fired. He resigned. In seven years, the College had had *five* presidents! I had lasted the longest of any of them—three years and 23 days.

The most serious consequence of my dismissal occurred in early 1972. It was then that the College had another accreditation visitation. The Accreditation Team submitted a highly critical report to the North Central Association of this visit. The team noted in its report a diminution of the progress that had been made in the College's management and operations as compared to its last visit in 1970 when I was President. Parenthetically, and ironically, *on the very day I was dismissed*, the North Central Association praised the "excellence of administrative procedures" at the College in a written evaluation report!

Accreditation Team members visiting the College in 1972 seemed appalled at the Board's philosophy and views which appeared to them to be an administering rather than a policy-making view. They noted hostility and division between various groups of faculty members. They noted hesitation, fear, and ineptness among many of the administrators. Morale was low among the students. A heavy, leaden air weighed on the campus. The Board had established its ultimate authority by its totalitarian action and method of deposing of me. But the price that was paid was evident everywhere. Instead of the uncalled for surgery having the effect the Board members had fully expected in their summary dismissal of me, the opposite had proven true. The College existed under a dark cloud of fear, dissension, and near chaos.

The Dental Hygiene Program even lost its accreditation and was disbanded! The community at large did not know who to blame for this appalling situation. The community, therefore, blamed "the College." The major concern of community members was the position in which the Dental Hygiene students were placed. What would the loss of accreditation of the Dental Hygiene Program mean to the students who now found themselves half way through a non-accredited program? How secure was the accreditation of other programs? What had the

College gained by my ousting? Then to top off all of these citizen questions and concerns was the added alarm of the faculty going out on strike for the third time in just four years. The 1972 delay of the opening of summer school proved to be the bitterest and longest delay of all.

The community and students were forced to reap the seeds of discord and destruction which had been sown by the unconstitutional and illegal actions of an egregious Board, endure the unethical behavior of irresponsible Union leaders, and to put up for far too long the threatening posture of the Black Studies Director and his blindly militant and radical sycophant followers. What had been undone in weeks after my dismissal would take years to rebuild under a strong President and a strong and experienced Board such as the one that originally hired me—one which knew the difference between administration and policy making and a Board that was willing to back its President in the tough decisions against the likes of Cooke and Lindstrand.

# Part IV

# INTO THE COURTS

# Chapter 18

# Into the District Court

When my family and I returned from our strained and shortened vacation trip to California, and found the alleged reasons for my dismissal scotch taped to the front door of our home, we presumed that the unproven allegations had also been released to the media. Instead, we found that though my dismissal had been announced by the Board to the media *in advance* of notifying me, the alleged reasons were *not* released. This forced me to release to the media the following, along with a listing of the nebulous allegations:

> Due to certain statements attributed to Board members of Prairie State College in the newspapers and on the radio, and due to certain oral statements attributed to Board members within the community which reflect adversely upon my personal and professional reputation, and due to the Boards repeated failure to release its charges to the public—which has been interpreted by many in the community as aspersions on my moral character, I am left with no other alternative but to publicly respond by releasing the alleged reasons for my unlawful dismissal as President of Prairie State College.

The charges given below were not presented to me until after my unlawful dismissal. The Board refused to give me a hearing before or after the unlawful dismissal in spite of its own Policy No. 1.25 (19) which states that the Board will serve as a "court of last appeal"—the same policy which it has honored for other academic staff on at least four occasions. The Board's refusal to present its charges until after my unlawful dismissal, and their refusal to provide an opportunity to respond to the charges before or after the unlawful dismissal, and their refusal to allow me to face my accusers, is in complete violation of every democratic tradition of due process, fair play, and just common decency. Moreover, how can the Board know if their charges have any substance in fact when they have never permitted me an opportunity to give a response? The truth of the matter is that the charges are absurd and without foundation in fact! They are specious rationalizations for the real reasons which are that the Board believed that making me a "sacrificial lamb" their problems with the faculty union leadership and the Black Studies program would somehow miraculously end. These two factors, plus the fact that I resisted the Board's increasing encroachment into the administration of the College, caused them to reach far out for a justification of their roughshod action.

Anyone who was present, or read the account of the September 3, 1970 Prairie State College Board meeting, realizes that the problems at the College have increased since my unlawful termination. Never in my three year tenure as president has any regular Board meeting had to be recessed—yet the second regular Board meeting after my unlawful dismissal had to be recessed for 70 minutes due to demands, and a sustained demonstration, to increase the Black Studies program's budget. Moreover, at this same meeting, the administration, certain community leaders, and even one Board member found it necessary to publicly protest and comment on the increasing administration by the Board into College affairs. When the chief executive officer of an institution has board members who constantly are stepping out of their proper role as policy makers and instead into the chairs of administrators, chaos can be the only result.

The Board's hope of resolving problems of their own making by making me their scapegoat will not succeed. Matters will increasingly worsen if the Board continues on its singular direction towards moving into the administrative areas of the College—all to the detriment of the students and the community.

> I have been gratified by the tremendous number of well-wishers who have extended their support since my return from California. And though the Board has steadfastly remained intransigent by refusing to meet with me or my attorney to meaningfully negotiate a settlement, I remain optimistic that the courts will see to it that due process, fair play, and justice will ultimately prevail....

I then listed the charges reported in Chapter 16 and concluded my statement with the following:

> In summary, the Board refused to give me the above charges prior to my unlawful dismissal. Requests for a hearing on the charges before and after the unlawful dismissal have been denied. None of the charges were ever brought to my attention prior to my unlawful dismissal for an answer or correction—if indeed they had been valid charges. Each of the charges listed can be fully refuted.
>
> (signed) Richard W. Hostrop

The Board continued to refuse to negotiate with me or my attorney. They instead propelled me into uncharted waters as I was soon to learn. The Board believed they held a trump card to sustain their cavalier action…no matter what. That "trump card" was *Pickering*.

Marvin Pickering was a teacher in Lockport, Illinois who had sent to a local newspaper for publication a letter charging that 1) the school board had misinformed the public about its allocation of financial resources in a proposed school bond issue; and 2) the superintendent had threatened to discipline any teacher who refused to support the bond issue. After a full hearing, the school board decided that the letter was "detrimental" to the efficient operation and administration of the schools of the district" and terminated Pickering's employment. Contending that his dismissal violated his First and Fourteenth Amendments rights, Pickering brought suit in an Illinois court. The state court rejected his claim, but the United States Supreme

Court disagreed and ordered his reinstatement. The so-called *Pickering* exception states:

> It is possible to conceive of some positions in public employment in which the need for confidentiality is so great that even completely correct statements might furnish a permissible ground for dismissal. Likewise, positions in public employment in which the relationship between superior and subordinate is of such a personal and intimate nature that certain forms of public criticism of the superior by the subordinate would seriously undermine the effectiveness of the working relationship between them can also be imagined.

I learned from a trustworthy source that the *Pickering* "exception" was the cause of Anthony Scariano's exuding confidence when he discussed *Hostrop* with his clients and others. But he "overlooked" one major difference between *Pickering* and *Hostrop.*

The chief point made in the *Pickering* exception as to an allowable restriction of freedom of speech is when there exists a close working relationship in which the subordinate is *publicly highly critical of his superior(s).* At no time up to July 23, 1970 was I even privately critical of the Board to others, let alone publicly critical of them. I never was insubordinate. I never refused to carry out a Board decision. I never refused to desist from an action if so directed by the Board. Moreover, the comments made in my confidential Black Studies memorandum were neither critical of my superordinates nor was the memorandum intended for *public* release. Like Daniel Moynihan's "benign neglect" memorandum, like the Pentagon Papers, and like countless other memoranda from the administrative offices of the White House down to a multitude of other lesser offices in cities, towns, and villages, my *private* memorandum was released to the public without my authorization. Therefore, my "completely correct statements" could not "furnish a permissible ground for dismissal." In short, as my attorney and I saw it, the *Pickering* exception did not apply to *Hostrop*. But these "technicalities" did not deter the Defendants. Instead, as will be discussed later, they successfully fit the square peg of *Hostrop* into the round hole of *Pickering*.

As has been briefly mentioned earlier, the Board found the time to notify the local newspaper and radio station of their dismissal action, as well as the large Chicago metropolitan newspapers, *prior* to notifying me. I learned of the Board's dismissal action via an 8:00 A.M. radio broadcast I happened to hear only by chance. I had to learn what the alleged reasons were three weeks later from the contents of an envelope scotch taped to the front door of my house. It was then that I learned that the Board's dismissal action also meant that even the $5,532.31 owed in accumulated leave would not be paid. This was how more than three years of 50 to 60 hour work weeks, devoted exclusively to the advancement of Prairie State College, was rewarded. It is because of these kinds of cavalier and insensitive actions that the finest possible individuals must be selected to serve on boards of trustees.

James Pappas filed on my behalf two suits against the Board of Trustees of Prairie State College, one in a state court and later one in a federal court. The state suit was for a breach of contract against the Board as corporate body in the amount of $100,000.

The United States District Court suit was filed under the Civil Rights Act of 1871 against each individual Board member as well as against the Board as a corporate body. This was done since Board members had conspired individually and collectively to dismiss me in meetings not sanctioned by state law nor in accordance with the requirements of the First, Fifth, and Fourteenth Amendments to the Constitution of the United States of America. Each Board member, as well as the Board as a corporate body, was sued in the amount of $100,000 for actual damages. Also sought from each was $500,000 in punitive damages due to Defendants inducing "mental strain" and damage to my personal and professional reputation. Also, a demand was made that the dismissal action be "held for naught" since such action was illegal according to state law, the Board's own Policies and Procedures, and Constitutional guarantees with respect to freedom of expression and due process rights. Illustrative of this law breaking and policy breaking is the fact that two Board members, Mellecker and Porter, though not even present at the July 23, 1970 special Board meeting, are officially recorded as having voted for my dismissal *by telephone*!

As my complaint was being prepared for the District Court, three worries quickly presented themselves. First and foremost was the realization that my attorney knew little more than I about Constitutional law. Second, neither he, those whose aid he sought in preparing my federal complaint, nor I were able to find a single case of an administrator who had ever challenged his or her dismissal on *Constitutional* grounds! And third, I was concerned about the federal judge assigned to the case. Judge Austin not only resided in the College district, but belonged to the same country club as Lester Kloss, the Board Chairman. Since both were active in club affairs, I assumed that they likely knew each other—perhaps well. Later I learned that Judge Austin's son served as a board member in one of Prairie State College's feeder schools and was friends of the soon to be elected new Board Chairman of Prairie State College.

I had other concerns, too. Those concerns resulted from surprises, disappointments, and disbeliefs. I had naively expected fellow educators to rally to my cause...and indirectly to theirs. Instead, I found that few individuals or professional groups wanted to have anything to do with me. I had overnight become a near outcast from my profession, a pariah. I had not played "Fire the Old Chief" according to the 200 year old unwritten rule of resigning when one is asked for a resignation. A "gentleman" does not fight. He resigns so that a board can "Hire a New Chief" and so that the "resignee" can play again another day somewhere else. The name of the game the administrator plays is called "Survival." He who survives the longest wins fame, fortune, prestige. No matter what principles one must compromise in order to survive, it does seem to me an inordinately large number of administrators do play "Survival." From my vantage point, he who has the longest tenure in office is not necessarily the best administrator. Instead, it may very well be that such an encrusted individual simply has compromised his principles the most and the longest. As with all things, there are, of course, notable exceptions to this observation. This is especially true where a long tenured board of trustees exists so that the "Survival" game need not be considered.

Perhaps the following brief account of my experiences will aid others who one day may have to decide if taking the lonely road of holding on to one's integrity and self-respect in the face of overwhelming odds by fighting a termination action is worth it vis-a-vis the time honored alternative of resigning. Now for some surprises, disappointments, and disbeliefs.

When I first returned from my vacation trip to California, I telephoned Richard Jones to inform him that in my judgment he might suffer a similar fate to my own because of the way he had handled the Calvin Savage matter. I invited him over to my house to discuss my concern with him. His reply was, "If you want to see me, you'll have to come over to my house." This was a man that I had worked with in another situation for a year. I had encouraged him to accept a subsequent job as better preparation for eventually becoming a community college administrator (which he did). I had been the one to encourage him to get a doctorate at my alma mater. When his application was first turned down by the Graduate School of Education at my university, I personally intervened on his behalf which resulted in a decision reversal. I then held the position of Vice-President of Student Services open for him for a year at Prairie State because of the confidence I had in him to do an excellent job. I had been considered his friend, so I mistakenly thought. Apparently he perceived "Survival" as best assured by completely disassociating himself from me. Indeed, instead of providing any kind of support anywhere, he "tattled" to my university mentor as a reporter rather than as a supporter. My mentor knew what had happened from Jones before I could even get to California to inform him and to seek his counsel and advice. I had looked upon Jones as a brother prior to his coming to Prairie State. But we all know how Joseph was treated by his brothers. Jones did manage to hang on to his position at Prairie State through the administration of Ashley Johnson, but the subsequent President, I was told, asked for Jones' resignation, which Jones gave. Jones was "smart," he played the "Survival" game quite well; he got a similar job in New Jersey. Lesson: Don't count on even your closest associates to support you. There are *many* "fair-weather friends."

I asked that the Illinois Association of Community College Presidents make an impartial investigation of the charges and circumstances surrounding my dismissal, then to publish their findings—whatever they might find. Two surprises resulted from this request. The first was that of the near dozen presidents who were present to hear my request, without exception, all at one time or another had been asked for their resignations—and *all* had acceded to the demand. Yet, as was plainly evident, each, because they had rolled over and "played dead," were "alive" to play the game of "Survival" another day. My second naive surprise came when the Presidents Council would not touch my requested investigation with a ten foot pole. The presidents present freely admitted that to undertake such an investigation might antagonize their own boards of trustees, and thus prove harmful to their own "Survival."

My request for an investigation to both the Illinois Junior College Board and the Board of Higher Education was answered in the negative.

I contacted the American Council on Education for assistance. I was told by the ACE that it does not provide such aid. Yet, at the time, ACE was taking part as an amicus curiae in a federal case in which it opposed colleges and universities having to give a hearing to nontenured teachers.

I sought the assistance of the newly formed American Association of University Administrators. I was informed that it had not yet been decided if the AAUA would involve itself in alleged violations by administrators of their academic freedom. Three years later the AAUA was still debating if they wished to take an activist role in protecting administrators' civil rights.

I wrote to the American Association of University Professors. The AAUP was not interested in making an investigation, even when I pointed out that I was a *tenured* member of the Prairie State College faculty as well as being President. Their excuse was that I had not been teaching at the time of the alleged violations to my academic freedom.

The American Association of School Administrators advised me that it did not have the funds to investigate alleged serious abuses of an administrator's civil rights. But, with a later increase in dues, AASA now has begun to take an activist role in situations where it appears that the civil rights of an administrator are or have been seriously abused.

The DuShane Fund of the National Education Association, a fund specifically established to protect educators' Constitutional rights, was unavailable to me. Repeated telephone calls and letters by my attorney and me for financial assistance went unanswered. A personal visit by me to the DuShane Fund headquarters in Washington, D.C. was of no avail—forms were filled out, an interview conducted, a promise of a prompt answer to my request for financial aid was given. But the promised answer never came. Apparently no answer was forthcoming because I was an administrator rather than a teacher.

In sum, no financial aid or investigation of my allegations was forthcoming from any source. I was on my own in a case whose outcome would effect millions of public administrators—outside as well as inside education.

Individuals at the College whom my wife and I believed to be genuine friends proved to be otherwise. With but four notable exceptions, we were "dropped" by colleagues and the wives of colleagues at the College upon my summary dismissal. We found that we had not been liked for ourselves, but only for the supposed power of the office I held. Fortunately, for our morale, in addition to the four loyal friends inside the College, we did have genuine friends outside the College community who proved to be understanding and loyal throughout the long travail.

What happened at Prairie State College certainly has proven to my wife's and my satisfaction the adage, "Everyone loves a winner." When one possesses money and/or high position, everyone is a friend. Without either, you quickly learn who your few true friends are. But the quality of these few true friends more than make up for the quantity of the fair weather friends.

After filing an Amended Complaint with the District Court, amended because of adding a First Amendment violation (my memorandum of May 25, 1970), Defendants took my deposition. The deposition, which was taken in Anthony Scariano's office, ran more than 60 pages in length. Present were four of the Board members whom I had not seen for nearly a year, their attorney, and mine. I felt tense by the Board members oppressive presence.

My nine page Amended Complaint was answered by Defendants with an unheard of lengthy 53 page response in the form of a Motion for Summary Judgment which asked that my Complaint be totally dismissed. As anticipated from reports I had been getting, Defendants rested their case almost entirely on *Pickering*. Parenthetically, that though my memorandum had been leaked, leaks did not stop at the College. There were few significant decisions or events inside the College or inside the councils of Board members and their attorney which I was not made shortly aware. Friends in widely varying positions who believed I had suffered an injustice kept me continually informed of plans and events they felt I should know of in seeking justice.

To bridge *Hostrop* to *Pickering*, Defendants asserted in their Motion for Summary Judgment that in my deposition I had admitted I had defied the Board. To "prove" this "defiance," they quoted my deposition as follows: "I would continue to write, speak out, and do what I felt was in the best interests of the College... (at 9) Defendants Motion concluded that because of this "self-declared open rebellion," plus their "personal loss of confidence" in me, they were justified in their summary dismissal of me under the so-called *Pickering* "exception."

The tactics of Defendants were hypocritical and no less than shysterism. To put it politely, they lied. What Defendants did was to quote but half a sentence (and *they* had charged me with deleting half a sentence in a *blank* , unsigned contract form...stating I had been deceitful!) What *Defendants* did was to quote but half a sentence. When the missing words misrepresented at the end of the quotation "..." are added the meaning of my statement becomes just the opposite of Defendants' bad faith assertion. The *entire* sentence reads, "I would continue to write, speak out, and do what I felt was in the best interests of the College *and the students so long as they were within the Policies and Procedures of the Board."* Obviously, one is not "defying" one's board or displaying "self-admitted open rebellion" when what one does is confined within the boundaries set by one's superordinates. Moreover, none of the alleged written reasons given by Defendants to justify my dismissal mentioned insubordination. Surely, such a charge would have headed the list had there indeed been any insubordination. As for the assertion that a superordinate should be given carte blanche to summarily dismiss a subordinate by merely declaring that a "loss of confidence" condition exists would give license to exercising the worst kind of arbitrary and capricious actions.

In Defendants' Motion for Summary Judgment, several other assertions with respect to the civil rights of administrators are interesting:

> A college presidency is not a profession and, therefore, should not be afforded the same procedural safeguards as for a non-tenured teacher (at 25-26).
>
> A College President, unlike a teacher, must serve at the pleasure of the Board (we use the term 'at the pleasure of the Board' fully cognizant of the fact that Dr. Hostrop was under 'contract' in this case...) (at 32-33).
>
> Rather than comparing [a college president] to a professor, a more appropriate comparison might be made with the president of a private corporation, a cabinet member, or...a Prime Minister (at 51).
>
> In short, a board should be able to summarily dismiss, without a hearing, its chief administrative officer (at 52).

> Only the board itself can properly determine whether it has lost confidence in its president, and such determination is not amenable to proof at a hearing (at 52).
>
> ...a school employee's First Amendment rights can be denied if he occupies a position which requires personal trust and confidence and a close working relationship to his board (at 53).

James Pappas replied on my behalf with a Memorandum in Opposition to Defendants' Motion for Summary Judgment 30 days later. But before the reply memorandum was prepared, we went on a fishing expedition of our own, though not the deposition route. So as not to alert our opponents, we deliberately waited until Defendants' Motion for Summary Judgment had been filed to extract what we long suspected would result in exposing the hypocrisy and lies of the Defendants. We requested the *executive session* minutes of the July 23, 1970 special Board meeting which had been specifically convened to dismiss me. These minutes had to be given to us because we could have subpoenaed them through the Court. What those minutes revealed should have put Defendants' case in shambles. Why these revelations did not, only Judge Austin can answer to his conscience.

Though Defendants' Motion for Summary Judgment, and even a sworn statement by Board Chairman Lester Kloss, repeatedly avowed that I would have been given charges and a hearing on July 23, 1970 had I only attended the meeting, the executive session minutes shown below reveal it would have been even worse than a kangaroo court:

> Mr. Kloss said there were two things to report to the Board. He said some time had been spent with Ashley Johnson last night offering him the position of interim president. Mr. Johnson said he wanted to think about it. Mr. Johnson called Dr. Griffith today and advised him that he would accept the appointment as interim president.
>
> Mr. Kloss said they did make a commitment to Mr. Johnson and the thinking was that he would serve through two semesters with the possibility that he might be asked to serve beyond that if a suitable replacement had not been found.

Mr. Johnson, Mr. Kloss reported, had advised them that a great deal of talk was on campus that the meeting tonight was to terminate Dr. Hostrop.

Faculty groups have expressed an interest in being involved in the selection of an interim president. Mr. Kloss said that after discussing it with Mr. Johnson and having made the selection, it should be announced to the faculty or discussed with them next week. He felt it would be difficult for the faculty not to back Mr. Johnson after they had submitted a letter of commendation for him recently.

Dr. Griffin said he felt the Board should make the announcement on the appointment of Mr. Johnson on Tuesday so the press could get it in time for the middle of the week issue of their respective papers. He suggested inviting the faculty and making a formal announcement to them or a printed announcement.

Mr. Kloss said that Dr. Collins [*Board Chairman at the time I was hired*] had called him about 4:30 today. He said it was obvious that Dr. Hostrop had talked to him. Dr. Collins told Mr. Kloss it would be very wise if the Board gave Dr. Hostrop a year's pay plus his accumulated leave because Dr. Hostrop could win his case against the Board and because of the blow to the image of the college. Mr. Kloss told him he appreciated hearing his viewpoint but the decision was one this Board had to make. Dr. Collins asked what the maximum offer was the Board would make. Mr. Kloss told him it would be inappropriate to discuss this but that the offer Dr. Hostrop now has is very close to the maximum.

Mr. Scariano reported that he told Mr. Pappas that the offer of the Board was one half year's pay and it was not negotiable - $14,500 and a resignation. Mr. Scariano said if Dr. Hostrop got another job he will be making $20,000 to $25,000. He said he thinks Dr. Hostrop has a one year contract at most. He advised the Board that they would be unwise to give more than one half year's pay. He said Mr. Pappas' offer had been from July 25, 1970 to October 2, 1970 at $29,000 per year and October 3, 1970 to June 30, 1971 - $29,000. [*Note: Mr. Pappas, for over a week, had informed Mr. Scariano that I would settle for six month's pay, plus my accumulated leave of 49.6 days*].

Mrs. Hill suggested calling Mr. Pappas to see if he was coming to the meeting tonight. Mr. Scariano called Mr. Pappas but could not reach him. [*Note: According to Mr. Pappas, he and Mr. Scariano had talked earlier in the day with Mr. Pappas stating to me that Mr. Scariano informed him the Board would not yield by paying me my accumulated leave, in addition to the six months pay.*] Scariano said if Dr. Hostrop files suit, he will be a long time getting a trial. [*Note: Later on in the meeting, Mr. Scariano did reach Mr. Pappas. According to Mr. Pappas, which was relayed to me, "it's six months pay or nothing." Also, according to Mr. Pappas, Mr. Scariano demanded that I come down to the Special meeting being held to "resign or be "fired." Mr. Pappas again insisted that, in addition to the six month's pay, I had to also be paid for my accumulated leave. Mr. Scariano again refused. An irreconcilable impasse had been reached.*]

The documentation of the action to be taken was discussed and is as follows: [*Charges were listed as was shown in Chapter 16.*]

As is plainly shown by the Executive Session minutes of July 23, 1970 above, Ashley Johnson had been offered the presidency the day *before* the dismissal meeting and that, moreover, Johnson had accepted the position even before I was dismissed! To me, this proved that Johnson was a "Judas." To me, the executive session minutes proved the trustees to be hypocrites and liars. No purpose would have been served by my appearance before a kangaroo court. My dismissal had already been preordained and my replacement hired. In a ten minute special Board meeting four days *after* the Board's dismissal action, Johnson's employment was merely ratified. As the minutes above also clearly reveal, it had never been the intention of the Board to have offered charges nor a hearing in advance of the dismissal action.

The facts exposed in the executive session minutes were clearly pointed out to the District Court, but to no avail. It was reiterated to the Court that I was under contract and that Board Policy 2.20 specifically prohibits summary dismissal: "....It will be the duty of the Board to renew the contract of the President of the College or to notify him *in writing* [*emphasis added*] prior to the first of January in the last year of his incumbency that his services will not be required after the expiration of his present contract." Rather than having ever received notice of contract nonrenewal, my contract had been *renewed* for two years, at an increase in salary, just three months prior to the dismissal action.

In Defendants' Reply Memorandum, not surprisingly, they dropped any reference to fair hearings. Instead, they reasserted their claim that I was "recalcitrant" and that I "refused" to implement their policies, neither of which was true. Substantiated events, dates, and places for these bald untrue allegations were not even attempted. Instead, Defendants merely reargued that "If an administrator chose to exercise his rights of 'free expression' towards a given policy determination...he would be able to use the First Amendment as a shield while he opposed the board at every step of the implementation process" (at 4).

On February 1, 1972, 18 months after the Board's dismissal action of me and ten months after I had filed an Amended Complaint, the District Court handed down its decision. Judge Austin, in his Memorandum Opinion, stated: "The complaint is dismissed for failure to state a claim upon which relief can be granted" (at 10).

Judge Austin's rationale for his opinion will seem very strange indeed to most educators, and certainly to every experienced administrator. He wrote:

> "This court does not think that there need be the same 'vigilant protection' when an administrator is involved as may be necessary when a teacher is. The need for teachers to have freedom in what they teach arises from the very heart of the First Amendment. The workshop of the administrator, however, is not the classroom but the office and the conference room. His primary duties are to coordinate, delegate, and regulate, not to educate (at 8).

The Court's opinion that administrators under contract and under written protective policies have no freedom of speech and due process rights except those involving discrimination "based on sex, race, color, creed or national origin" (at 9) was, in my judgment, discriminatory in itself vis-a-vis teachers. But Judge Austin held that if the *Pickering* exception was "to have any application, this court believes it must be in a case such as the one now before it" (at 4).

Needless to say, Defendants and their attorney were jubilant at the outcome. *Pickering* had come through for them as hoped. As for me, quite naturally, the outcome had the opposite effect, a disillusionment with the fairness of our judicial system. With this feeling I was faced with a question, Should I appeal the decision? I knew that such an appeal would not only be time consuming but would require still more limited personal funds to match the unlimited institutional resources of my opponents. For a week I labored over this question. In the meantime, in response to newspaper queries, I released the following statement to the press:

> February 1, 1972 marks a Black Border Day for every school, college, and university administrator in this nation. Now, unlike students and teachers, administrators have been formally excluded from freedom of expression and due process rights, supposedly guaranteed by the Bill of Rights. Contracts are not worth the paper they are printed on and so-called protective board policies are without meaning. Administrators can only make controversial recommendations or write books at their own peril.
>
> The Court's decision has, de facto, given boards of trustees license to violate state law, to violate their own policies and procedures, and to summarily dismiss their administrators without proper notice, advance charges, or a hearing. The Court's decision will give courage to egregious and perfidious boards to arbitrarily replace educational leaders with obsequious sycophants, knowing they will never have to be held accountable to a higher authority. What an example of our system of justice to present to the youth of America; what a chilling effect on the Academic Freedom of administrators and teachers left in such an aftermath; what risk to the civil liberties for all!

# Chapter 19

# On to the Circuit Court of Appeals

The Chairman of the Board of Trustees of Prairie State College, now Dr. James Griffith, took to the radio to express the Board's surprise to the public when I announced that I was appealing the decision of the District Court. Griffith gratuitously conceded that I did have the right to make such an appeal. But he smugly said, "Even if Doctor Hostrop were successful on appeal, all it would mean is that the Board would have to give him a hearing."

The implication was clear. I was foolish to waste more money because even if I were successful in my appeal, the hearing before an obviously biased board would be of no avail.

By this time, what I had earlier feared had been confirmed. This concern was summed up by Judge Austin when in his *Memorandum Opinion* he wrote: "...none of the parties nor this court have found a case as the instant one involving a school administrator rather than a teacher..." (at 4).

New law was being formulated. I WAS THE FIRST ADMINISTRATOR IN OUR NATION'S 200 YEAR OLD HISTORY WHO HAD EVER CHALLENGED HIS DISMISSAL ON CONSTITUTIONAL GROUNDS! There had been some campus speakers, more student organizations, dozens of school newspaper editors, scores of students, and hundreds of teachers who in the past had made challenges in the federal courts over alleged violations of their Constitutional rights. Each such case made it easier for others to follow. Case law was becoming firmly established in these categories of personnel. But there were no precedents or well-established cases, nothing set to turn to with the respect to the civil rights of administrators. But with the decision of the District Court, law *had* been established, unless and until overturned on appeal. The law was clear. Administrators have no First Amendment rights to freedom of expression nor any Fourteenth Amendment rights to due process of law. The only exception would be in instances which substantially relate to discrimination based on sex, race, color, creed, or national origin.

The new law of the land was quickly distributed —irresponsibility. A noted schools attorney, without contacting either me or more attorney, published the District Court's opinion mentioning me specifically by name. This was irresponsible because he propagated a decision to administrators which even then was under challenge. Moreover, he caused me great personal and professional embarrassment. His action affected my job opportunities by citing my name alone among the cases mentioned in a widely distributed pamphlet he had prepared in particular for school board members and high level administrators. This attorney now holds one of the most responsible positions in all of public education. In his wish to be first, board members and administrators were left with the impression that the law had been firmly set. If this "noted" attorney had contacted either my attorney or me, he would have learned that *Hostrop was* on appeal. He then, at the very least, could have and should have, added this fact. I wrote this attorney to express my astonishment at his irresponsibility, but he never even showed the courtesy of answering my letter. I mention this incident for several reasons. Foremost, this paragraph is for the many school and civil rights attorneys I anticipate will read this book. Ethical and professional canons require that *all* relevant facts known before publication be revealed to one's audience. No one litigant should be cited by name unless *all* litigants are cited by name. For those cases on appeal, when the law has not yet been firmly set, names should not be used outside the legal profession. To do so can irreparably damage the litigant's reputation and opportunity for securing new employment within his or her profession. Certainly, serious damage was done in my case by an overeager attorney who wanted to get my case into print over his by-line before anyone else did.

Though James Pappas had never claimed to be a Constitutional attorney, in the final analysis, with one notable exception (not demanding a jury trial), he did a competent job in the District Court…notwithstanding that I lost. In preparing my complaint, Pappas had contacted noted law professors whose specialty was Constitutional law. He used the help of third year University of Chicago law students whose specialty was to be Constitutional law. He talked to other practicing attorneys. He studied what for him was a new area as well. I did a great deal of legal research myself and provided him with a wealth of information. But, in the end, it was to no avail. We lost in the District Court.

I had retained James Pappas in the first place in the full expectation that an out-of-court settlement could be reached. This, then, would have led to my resignation as countless other administrators had done before me. But, as the reader now knows, what separated the Board and me was $5,532.31, the amount of money due from my accumulation of 49.6 vacation days earned under previous contracts. To me, this sum of money was a moral issue— my blood, sweat, and tears of more than three years on behalf of the College. No moral issue existed for the Board. To them it was merely a question of giving up as little money as possible. But I felt I had already given up more than what could be considered a reasonable sacrifice. I had a contract for two years and accumulated leave of more than two months. Yet, I would have agreed to resign for only the payment of my accumulated leave, plus six months of the two-year contract, a "savings" to the Board of $46,500. I would have then gone to Governors State University. And Pappas would have been well satisfied with his $750 for effecting a more than reasonable settlement from what should have been the Board's perspective, but they preferred to pay their attorney about seven times more than what it would have cost the taxpayers of the district by giving me six moths pay and payment for my accumulated leave. In short, neither Pappas nor I foresaw we would one day be in the federal courts. It was fate. It was a marriage of circumstances that brought us together as a result of the Board's ultimatum of "Six months pay, period! Take it or leave it."

Though I believe our loss in the District Court was not the fault of James Pappas, he nevertheless recognized that for him to carry the case beyond the District Court level alone would be unethical due to his lack of experience in the areas being challenged and would be a disservice to me. He, therefore, recommended several attorneys for me to contact, individuals who were first rank Constitutional specialists. I did this and settled on Elmer Gertz and his able associate, Wayne B. Giampietro. Gertz and Giampietro took my case on a contingency basis—60 percent to me of any proceeds collected and 40 percent to them...out of pocket expenses to be borne by me alone.

Elmer Gertz is probably most noted for his success in achieving the parole of Nathan Leopold. He also is noted for such cases as those involving Jack Ruby, defending the right to publish *The Tropic of Capricorn*, defenses against censorship in films, etc. In Illinois, he is known as the "Father of the Illinois Bill of Rights," having served as chairman of the civil rights portion of the Illinois Constitution adopted in 1970. Wayne B. Giampietro is a master at preparing logical and persuasive briefs. Both attorneys have argued before the United States Supreme Court a number of times.

In the appeal prepared for the United States Court of Appeals for the Seventh Circuit (Chicago), two issues were presented for review: 1) "Whether State College Administrators are entitled to the same First Amendment and due process rights as are College Teachers," and 2) "Whether Plaintiff was discharged from employment with Prairie State College in violation of the rules and regulations of that College." It was argued in the *Brief and Argument for the Appellant* that the answer to each should be yes.

According to form, my 16 page *Brief and Argument* was answered by a ponderous 31 page *Brief and Argument for Appellees*. In their long-winded defense. Defendants also presented two issues for review: 1) "Whether the Defendant, BOARD OF JUNIOR COLLEGE DISTRICT 515, violated the First Amendment right of the Plaintiff, RICHARD W. HOSTROP, by terminating his employment as President of said junior college," and 2) "Whether a President of a Junior College is entitled to procedural due process upon termination of employment." Of course, the *Brief and Argument for the Appellees* concluded that the answer to each should be no.

From the Board's reiterated view, administrators should have no rights to freedom of expression or due process of law. Quite naturally, Defendants repeated the same arguments as had been so successfully argued in their District Court briefs. Now these arguments were further strengthened by citations from the District Court's *Memorandum Opinion*, particularly those associated with *Pickering*.

The *Reply Brief* prepared on my behalf was nothing short of brilliant. In 17 pages, my opponents arguments were demolished; their assertions that I had been "rebellious" and "recalcitrant" were exposed for the lies they were.

On November 1, 1972, nine months to the day of Judge Austin's *Memorandum Opinion*, oral arguments were heard before the three judge panel of the United States Circuit Court of Appeals. I was delighted with the composition of the panel for it included Chief Judge Swygert, Senior Circuit Judge Castle, and Circuit Judge Pell. To have the two highest ranking judges in the Circuit, plus the exceedingly fine jurist Pell, was viewed by me as being determinative of the question, Do administrators have any constitutional rights as administrators?

In the District Court there is no requirement or right to be orally heard by the presiding judge on Motions for Summary

Judgment. Thus, no oral arguments had been presented before Judge Austin. He relied solely upon written arguments in reaching his determination on the issues presented. But in the Circuit Court, always three judges sit and always oral as well as written arguments are presented and heard. Moreover, only on the day of oral arguments does one learn who the three assigned judges are. The date and time of oral arguments is generally not known more than a week in advance, often less. Cases are called up only after the three assigned judges to the case have had an opportunity to review the written arguments of the litigating parties and the opinion of the lower court judge. When the time does come to present oral arguments, each side generally is limited to 30 minutes. Judges, of course, are also free to ask questions on both the written and oral arguments of the respective parties at this time.

Elmer Gertz, as attorney for the Plaintiff-Appellant, spoke first, reserving five minutes to rebut anything untoward by the attorney for Defendants-Appellees. With clarity and logic, with facts and persuasion , Gertz exposed Defendants for what they were.

When Elmer Gertz finished, it was the turn of the attorney for Defendants-Appellees. But it was not Anthony Scariano who argued, but his junior partner, a man who had never argued before a federal court before. Senior Circuit Judge Castle broke into the argument being presented to ask, "It is your position then that if Doctor Hostrop were a teacher rather than an administrator who had written the Black Studies memorandum, he would have rights under the First Amendment?"

"Yes," was the response given.

"To be sure that I understand you...because Doctor Hostrop is an administrator, he doesn't have any First Amendment rights?"

"That's our position...because of *Pickering*," the junior attorney for Defendants-Appellees limply answered.

To me, Defendants' position was considerably weakened by the failure of Scariano to argue his clients' case. Instead, he had sent in a young, inexperienced attorney to argue a landmark case against one of the best Constitutional attorneys in the nation.

When my wife and I observed the glances given by the judges to one another over the responses given by our opponents' attorney, our hearts lifted. But afterwards, Elmer Gertz cautioned us. Though he admitted to being hopeful, he nevertheless warned us that he had seen too many cases go in the opposite direction expected. This sobered us. We were sobered still further when we learned from both our attorneys and the Circuit Court offices not to expect an answer to our appeal for at least four months. To our amazement and that of our attorneys, only seven weeks later, on December 23, 1972, a decision was handed down. Best of all it was a present, a Christmas present in which the District Court's *Memorandum Opinion* was reversed by a vote of 3 to 0!

There are a number of important points made in this landmark decision which public administrators, outside as well as inside education, should be made aware. So should every attorney.

Senior Circuit Court Judge Castle noted in the reversal that, "The basic question on this appeal is whether the rights of free expression and procedural due process traditionally given to teachers and other public employees extend also to a college president who was hired to act as the direct agent of a school board" (at 12).

In the next ten pages, the answer to that basic question was essentially yes. However, one important qualification was made: "...there are differences between...administrators and teachers so that...different...grounds for dismissing [an administrator] may be justifiable...[a] discharge of [an administrator] will have to take the particular duties...and his working relationship with [his superordinate] into account." (at 11).

Other salient points made by the Circuit Court in its reversal of the District Court include:

> Defendants argue that...administrators...can be discharged whenever they circulate proposals that might offend the sensibilities of [those] that hired them, for their jobs require that they do not offend....

Defendants rely on the language in *Pickering* ... to differentiate between teachers and administrators, one class which may dissipate the confidence of the school board by making certain statements, and one class which cannot afford to…(at 5).

We do not interpret *Pickering* so as to support defendants' position on this appeal, especially when that case placed within context of other first amendment decisions. It has been consistently held that a government cannot punish a person for his speech alone, but only for speech that causes substantial disruption or hinders the functioning of the state….an employee's speech may be regulated only if a public entity can show that its functions are being substantially impeded by the employee's statements....Absent actual proof of such an impairment, the face of the pleadings shows no reason to deny Dr. Hostrop's first amendment rights. It was error to dismiss his complaint for failure to state a cause of action on first amendment grounds (at 6-7).

An important distinction between *Pickering* and the instant case is that teacher Pickering engaged in criticism of the school board and that Dr. Hostrop merely made a suggestion for a change in curriculum. In fact, the general guidelines drawn by *Pickering* for deciding whether an employee's speech should be restricted support Dr. Hostrop's first amendment right to propose changes in the curriculum....To silence "vigorous and robust debate" in the formulation of educational policy on the administrative level would certainly be contrary to the spirit of the *Pickering* decision (at 7-8).

Plaintiff's allegation that he was discharged merely for circulating the memorandum entitles to him relief under another legal theory....As a public employee, [he] is entitled to be protected from retaliation for actions which he had every reason to believe were a part of his assigned duties (at 8).

....Due process rights of law requires that certain procedural safeguards be extended before a state can extinguish that interest (at 9).

Plaintiff's complaint makes a credible showing of a deprivation of "liberty" as it is defined in…*Roth*. A person is deprived of "liberty" if the state damages his standing in the community by charging him with an unsavory character trait such as dishonesty or immorality. Plaintiff's complaint alleges facts showing an attack on his veracity, for the list of charges which defendants submitted to justify his dismissal accused him of misrepresentations, supplying false information, and witholding important information. In such a case, due process must provide notice and an opportunity to refute such charges. Plaintiff's complaint also alleges facts showing a deprivation of "property" as it is defined in *Roth*....A person is deprived of property if the government extinguishes his legitimate claim of entitlement to his job....defendants had agreed to employ [Dr. Hostrop] until June 30, 1972 under terms of a series of employment contracts. A term of employment set by contract has been recognized as a property interest which the state cannot extinguish without conforming to the dictates of procedural due process....such a contractually-established property interest obligates the Board to grant plaintiff a hearing where he can be fully informed of the reasons for his nonretention and to challenge their sufficiency (at 9-10).

Dr. Hostrop's interest lie in protecting his first amendment rights and future employment prospects and in avoiding dismissal when it is not justified by the facts. We find that the resolution of these interests requires that plaintiff be given notice of the charges against him, notice of evidence upon which the charges will be based, a hearing before a tribunal possessing apparent impartiality, and a chance to present witnesses and confront adverse evidence at the hearing (at 10-11).

Defendants had presented two issues for review before the Circuit Court, issues which they were confident would be sustained because of *Pickering*. But they were wrong. The Circuit Court ruled that administrators do indeed have freedom of speech rights under the First Amendment and due process rights under the Fourteenth Amendment.

For the first time in more than two years, there was real joy in my home. But it was not to last. It was soon found that the fight was far from finished...nor was the ultimate outcome what was expected.

# Chapter 20

# Up to the United States Supreme Court

The College Board Chairman had publicly announced ten months earlier that should I be successful in my appeal, as unlikely as this was, all that would be required of the Board would be to grant me a hearing. There, of course, could be no doubt as to what the outcome would be before an obviously prejudiced board. But once again, the cocksure certainty of the Board was knocked usunder. The Circuit Court had ruled that hearings for administrators, in which civil rights issues were at stake, required a trial-type hearing...and before an apparent *impartial* tribunal.

The Circuit Court's decision must have seriously addled the thinking ability of the Defendants, for now a most strange public declaration was forthcoming from Griffith. He declared in the *STAR*, "Dr. Hostrop did not win his case against the Board in the Court of Appeals...the Court merely felt that Dr. Hostrop's complaint contained several allegations, that might, if proved, entitle him to some form of relief."

The Board Chairman's declarations almost read as though the Board had won and I had lost the appeal. However, the public facade of confidence did not spill over to the legal maneuvering that was occurring out of public view. Defendants, in private, were anything but confident, I learned. Their backs were against the wall—and they knew it.

Like a cornered beast, the Board was quick to make its move. However, is so doing, the Board never informed the public they were supposed to be representing as to what their intentions were. It was only after the decision of the United States Supreme Court, weeks later, that Defendants belatedly informed the public how they had been spending the public's money.

Less than a month after the reversal of the District Court's opinion, Defendants filed a *Motion for Stay of Mandate*. They did this in the hopes of preventing the implementation of the Circuit Court's decisions while they appealed to the Supreme Court. This delaying tactic was countered four days later when my attorneys filed *Plaintiff's Objection to Stay of Mandate*. Two days thereafter, Defendants' *Motion for Stay of Mandate* was denied by the Circuit Court. As a result, *Hostrop* was remanded back to Judge Austin in the District Court for implementation of the Circuit Court's rulings.

Though Judge Austin could have proceeded toward rectifying the great wrong done to me and my family, *he* chose to wait out the decision of the United States Supreme Court. Thus, Defendants' *Motion for Stay of Mandate* proved unnecessary. I presume Judge Austin's refusal to proceed in implementing the Circuit Court's rulings resulted in his confidence that his *Memorandum Opinion* would be sustained by the Supreme Court. Conversely, I presume the Circuit Court's denial of Defendants' *Motion for Stay of Mandate* was an expression of that Court's confidence that its decisions would be upheld by the highest court in the land. One court had to be wrong. Which one?

Even though Defendants' *Motion for Stay of Mandate* was denied, this in no way prevented them from making a direct appeal to the Supreme Court. But it surely hurt them psychologically to have to also have sent forward a *Motion for Stay of Mandate which* had been denied. What strategy they had in mind is shrouded. They had practically nothing to gain and much to lose with their *Motion for Stay of Mandate*. In the face of a 3 to 0 reversal, they should have realized that the odds were overwhelmingly against them for a ruling in their favor. This is particularly true when both the Chief Judge and the Senior Judge on the Circuit Court of Appeals concurred in the reversal in my favor. All that was really was accomplished was more legal fees for Scariano at the expense of the taxpayers of Prairie State College.

As it was, and as was their right, Defendants filed a *Petition for Writ of Certiorari*on March 16, 1973. They asked to be allowed to file briefs and to argue orally before the high court. They claimed that their *Petition* should be granted because, "The decision of the court below is in conflict with the decisions of the United States Supreme Court in *Cafeteria Workers*...*Roth*...and *Sinderman*..." (at 2).

Defendants further argued:

> Clearly, the questions presented here are of great importance affecting virtually every public school in the United States...(at 8).
>
> To require school boards to provide a full trial-type hearing before apparent impartial tribunals prior to discharging their chief administrators would create havoc and uncertainty in the nation's public schools....(at 9).
>
> ...the present case does not represent any prospect for a remedy through a hearing....[A] Board...must retain the right to summarily dismiss its President when it no longer has confidence in him...(at 10)
>
> While the decisions of this Court in *Roth* and *Sindermann* have done much to clarify questions concerning due process rights in cases of teacher dismissals, it is urged that further clarification is needed as to the due process and First Amendment rights of those public employees who sere in administrative or managerial capacities. The problem and issues involved in this case, of course, are not limited to public schools; rather, these issues can arise whenever any public

> body attempts to dismiss an administrator. Since there are millions of employees who fall into this category, the issues raised by this case will undoubtedly arise again and again. Until these issues are resolved by this Court, the only federal precedent dealing with the procedural and substantitive due process rights of chief administrators will be the Appellate Court's decision in the instant case, and that Court's opinion has merely equated the rights of chief administrators with the rights of classroom teachers (at 10-11).

As the above shows, Defendants' *Petition* to the Supreme Court little resembled the pompous public bombast of the Prairie State College Board Chairman when he declared, "Dr. Hostrop did not win his case against the Board in the Court of Appeals...."

Defendants had used nearly all of the 90 days they were allowed to appeal to the Supreme Court. Most of our allowable 30 days were likewise used to prepare *Respondent's Brief in Opposition to Petition for a Writ of Certiorari to the United States Court of Appeals for the Seventh District.*

As in the Circuit Court, Defendants' contentions and logic were attacked head on by our *Brief* before the Supreme Court, with devastating effect. For example:

> Defendants' argument amounts to nothing more than an assertion that school boards across the country should be given carte blanche to discharge their...administrative officials in disregard of rudimentary elements of due process (at 5).
>
> Defendants proceed on the erroneous grounds that the nature of the protection afforded to individuals rests entirely upon their status (at 6).
>
> Contrary to the assertions of defendants, a hearing *prior* to the decision to terminate is the rule, rather than the exception (at 7).
>
> It is difficult to conceive how defendants could object to the Court of Appeals stipulation that the hearing be held "before a tribunal possessing apparent impartiality." Surely, they do not ask this Court to sanction the holding of a hearing by a biased tribunal which has already predetermined the case. To so hold would destroy the reasons

for holding a hearing in the first place. It would sanction the existence of a kangaroo court. If a hearing is to be held prior to the taking of the proposed action, there must be a reasonable chance on the part of the employee to convince the decision-makers that the proposed action ought not be taken. Anything less would be nothing more than paying lip service to the Constitution while ignoring its substantive protections (at 7-8).

*The lack of good faith of defendants herein is amply demonstrated even in their Petition for Writ of Certiorari, where they state that "there is no possibility that the plaintiff could be reinstated."* (Petition, p. 10) This shows that at not time had defendants ever considered granting plaintiff the constitutional rights to which he was entitled. They had made up their minds, and nothing that could be done or said would change their minds. Even proof that their reasons for discharge were totally unfounded and erroneous would not serve to grant plaintiff his contractual and constitutional rights (at 8).

While tacitly recognizing that plaintiff does in fact have First Amendment rights to freedom of speech, defendants reiterate their previous argument that the Board "must retain the right to summarily dismiss its President when it no longer had confidence in him." (Petition, p. 10) Yet, there is absolutely no reason given for this obviously fallacious attitude. Defendants would thus deny plaintiff all rights, both contractual and constitutional. This Court has consistently rejected the possibility of such arbitrary action by government, be it State or Federal. This argument presents absolutely nothing for this Court to consider. Certainly, it is within the power of the Board to determine how often it will review the relationship with its President. It need not enter into a two-year employment contract as it chose to do. Having made that determination, it must live with it (at 8-9).

In attempting to conjure the familiar "parade of horribles" which will follow the implementation of the decision of the Court of Appeals, none of which is factually founded, defendants argue that such implementation will force the Board to accept a President with whom it can no longer work in carrying out its duties. (Petition, p. 10) In support of this position, defendants posit the proposition that the president's position vis-a-vis the board is a close and intimate working relationship requiring a high degree of personal loyalty and confi-

> dence." (Petition, p. 9) There is nothing in the record to support this proposition other than defendants' self=serving arguments ....Petitioners assume that the only acceptable relationship is one of master and servant, where the servant constantly submits to the master at all times. The record does not indicate how a hearing procedure would interfere with the discretion of the Board in hiring and firing personnel. The record does indicate, without doubt, that defendants have in fact instituted just such a hearing procedure in their Policies and Procedures which they now contend would constitute a complete disruption of their ability to operate. Fair procedures are always distasteful to persons who want to bring about an unfair result (at 9).
>
> There is, in short, nothing in this record which would justify this Court's reaching any conclusion different from that reached by the Court of Appeals—the rights of plaintiff are the same rights of classroom teachers generally (at 10).
>
> Petitioners' argument is really summed up in their unwillingness to correct a gross injustice which they brought about. They want this Court to say that a college president under contract has no constitutional rights (at 11).

So effective must these arguments have seemed to Defendants, that no further response was attempted by them. It was waiting time once more. The highest court in the land could take anywhere from four months to two years in acting on Defendants' *Petition*, I was told. The hardest part of litigation is the waiting.

Three years had nearly passed since the Board's dismissal action against me, an action that took less than three hours to affect. Injustice can be perpetrated in hours, vindication takes years. The victim suffers while the victimizer delays with stipulations, postponements, and other wearing down maneuvering tactics. During these many months I had made more than 200 job applications. Because of the action of the Board, I was able to obtain only two interviews—both for presidencies, one in California and one in Hawaii. But in both instances, in the end, a contact by the interested college to members of the Prairie State College Board led to quick disinterest in me. The income of my family of four dropped overnight by nearly 80 percent...there it stayed for nearly ten years. Since I would not cooperate by resigning, the Board seemed determined to crush me economically and to destroy my morale in every way they could. The Board refused to pay me for my accumulated leave. They refused me a teaching position at the college while litigation continued on over my claim of presidential tenure. This refusal was in the face of my teaching *tenure* status at the College. Though nothing was in their false allegations as to my teaching competence, they nevertheless even denied me this right to support my family. Were they out to destroy my marriage as well? In short, these so-called "solid citizens" violated still another constitutional right, the right to be free from cruel and unusual punishment under the Eighth Amendment. Perhaps James Pappas, in his *Memorandum in Opposition of Defendants' Motion for Summary Judgment,* best sums up the situation at Prairie State College as it existed in the early 1970s. He wrote: "...it is strongly suggested that this is a case of man's inhumanity to his fellow man. Fairness and constitutional liberties are at stake. It is indeed a sad commentary when petulance and retaliatory action should take place of sound and reasoned judgment." (at 14)

Upon the Board's refusal to grant me employment even as a teacher under my teacher tenure status, and because of the many months of fruitless job searching, I was left with but one realistic alternative. If no one would employ me, I would have to employ myself. I decided that I must start my own business. This I did on July 1, 1972. I started my own book publishing firm —ETC Publications. Because I had proven myself a successful writer and had likewise had successful experience as a book editor, it seemed that book publishing would be the most logical area for me to pursue as a business. My "Rock of Gibralter" wife and I capitalized ETC (Education, Technology, Communications) with every liquid asset we had. Though there were friends who were interested in investing in the company, we chose to go it alone. In this way, should ETC not prove successful, then we would not have on our consciences the lost savings of dear and loyal friends. Obviously, ETC has become a viable book publishing company. The manufacturing and distribution of this book and nearly 150 other titles under the ETC Publications imprint testifies to this fact. In short, the Board was unable to crush me economically or spiritually. My morale remained relatively high considering what my family and I were forced to undergo for so many long months. My wife became the chief "breadwinner" as a middle school teacher—never complaining over the sudden burden of financial responsibility thrust upon her—without her love and strength, I could never had made it.

Just as we were prepared to settle for another long wait, the Supreme Court rendered its decision, a decision which may well have set a record insofar as deciding a civil rights case. In just *three weeks* after my attorneys had filed on my behalf their opposition brief to Defendants' request for a *Writ of Certiorari*, the Supreme Court acted in a tersely worded telegram:

> PETITION FOR CERTIORARI BOARD OF
> JUNIOR COLLEGE DISTRICT 515 AGAINST
> HOSTROP DENIED TODAY.
>
> MAY 7, 1973
>
> CLERK OF THE SUPREME COURT OF THE
> UNITED STATES

In a letter I wrote pertaining to reporting the decision for this book, I was notified by the Clerk of the United States Supreme Court that, "No Justice was noted on the public record that he would have granted certiorari." The decision of the Supreme Court, and the information provided by the Clerk of the Supreme Court, speak for themselves. The "vote" against the Board was 9 to 0.

With 13 words the Supreme Court had spoken. Public administrators, in and out of education, were granted powerful rights to freedom of expression as well as substantive and procedural due process. The law of the land with respect to the rights of public administrators had now been clearly and firmly established in the landmark case of *Hostrop*. Never again could an administrator's superior(s) summarily dismiss him for expressing opinions or making suggestions which were in no way publicly directed against such superiors. Never again could an administrator be dismissed without charges and a fair hearing in advance of any final action. The United States Supreme Court, by its refusal to disturb the decisions of the Circuit Court of Appeals, meant that what had been said by the Circuit Court was now law. Furthermore, the Circuit Court decisions were now stamped by the imprimatur of the Supreme Court.

*Hostrop* was now remanded back once more to the District Court for the implementation of the Circuit Court's decisions. How these decisions were implemented will be reported in the next chapter.

# Chapter 21

# Back to the District Court

I had made no public statement after the successful appeal in the Circuit Court. Nor did I after the Supreme Court's decision. Even the supercilious Board Chairman was silent after the decision of the Supreme Court.. This time he did not boast that I had not won anything as he had after my successful appeal in the Circuit Court. However, it is likely that his wife, who was an area reporter for the *STAR*, was responsible for the confusing headline, "High Court Shuns Hostrop Change," which appeared over a played-down article. But no matter. What really mattered was the decision of nine impartial justices sitting on the United States Supreme Court.

Three months after the action of the United States Supreme Court, in absence of the District Court calling up the litigating parties for further proceedings, my attorneys, on my behalf, made the next logical move. They prepared a *Motion for Summary Judgment on the Issue of Liability*, supporting *Memorandum* which was further buttressed by my sworn *Affidavit.*

The *Motion for Summary Judgment* pointed out to the District Court the decisions in *Hostrop* promulgated by the Circuit Court in support of my prayer " ...that this Court grant summary judgment in Plaintiff's favor on the issue of liability and that this Court further declare the purported discharge of Plaintiff is null and void and of no effect whatsoever, order the Plaintiff be reinstated as President of Prairie State College, and that this Court set this matter down on the issue of damages" (at 3).

My *Affidavit* simply summarized the fact that my purported discharge had not been supported with advance written charges nor was an opportunity ever given for a fair and impartial hearing. James Pappas also filed a supporting *Affidavit* reinforcing the statements made in mine.

Back in the District Court Scariano not only asked for 30 days to reply to my *Motion for Summary Judgment*, but to file a cross motion (which he never did) and supporting affidavits on behalf of his clients. Judge Austin granted Scariano's request. Two days before the 30 days were up, Scariano, true to his usual delaying tactics, requested of Judge Austin another 11 days to file his counter attack. It was granted. When the 11 days were nearly up, Scariano asked for still more time! This time for an additional 30 days—until November 30, 1973. Again, Defendants were obliged by Judge Austin. Judge Austin continually granted Defendants every possible consideration and full due process in preparing their defense as the Constitution allows, obverse to those considerations granted by Defendants to me.

Defendants finally filed an opposition motion and affidavits which were replete with unsubstantiated conclusions and falsehoods, especially as to what occurred during the period July 13 through July 23. Lies sometimes pay. On January 18, 1974 Judge Austin denied my *Motion for Summary Judgment*. On the other hand, Defendants' *Motion for Dismissal* was also denied. The substance of Judge Austin's written memorandum in dismissing Plaintiff's and Defendants' motions was that he had been presented with a "beclouded record." But his dismissals moved the case that much closer to trial where the conflicting assertions could be better analyzed and evaluated through vigorous examination and cross examination, through witnesses and exhibits.

With the now certain knowledge that the case was going to trial, my attorneys added a Count III to my *Complaint*, a breach of contract action in the amount of $250,000. Heretofore, the breach of contract action had been lying in the State Court. Thus instead of having to go through two trials, one would now suffice. With this amendment, a jury trial was requested. Judge Austin granted the addition of Count III, but denied the request for a jury trial. Judge Austin stated the jury trial request should have been filed at the time of the original complaint. However, the *Rules of Civil Procedure* allow for a jury demand "within 10 days of the last filed action."

A terrible weakness in our legal system is highlighted in *Hostrop*. Even when a federal district judge's rulings are overturned by a federal court, it is almost always remanded back *to the* ***same*** *overturned judge for supposed remedy*. Why overturned decisions are not remanded to a different federal district judge for trial is incomprehensible to me—no attorney has ever been able to give me a satisfactory answer as to why this is federal procedure. Certainly, because the overturned judge is more familiar with some facts of the case than a new one might be is not a satisfactory answer. In the case of Judge Austin, by refusing to grant me the jury trial I was entitled to, he alone was, and declared he would be, the "impartial" tribunal to give me a "fair" hearing. But did he?

In addition to filing Count III, both sides proceeded with the taking of depositions. I underwent two days of deposition taking. This, added to the one day in 1971, provided testimony of nearly 300 pages in length. Scariano tried to force false admissions out of me that I had been offered a hearing in his office on July 13, 1970 which he plainly knew was contrary to fact. He failed in his despicable attempt.

My attorneys took the depositions of all seven Defendants. The length of time in taking "discovery" testimony of all seven was less than mine alone. But the information elicited was damning and contrary to repeated assertions made in Defendants' written briefs to the District, Circuit, and Supreme Courts. Kloss, Jackson, and Griffith were the most untruthful.

Testimony by Porter, Mellecker, and Hill were the most truthful. Hannigan's testimony was nearly worthless.

Each side demanded examining the records of the other. This, along with depositions is allowed. The purpose of "discovery" is to eliminate as many "surprises" at trial as possible, to theoretically expedite the trial itself. But one particular element in this procedure seems very wrong. Defendants are permitted by law to attend the deposition taking of one another. This can militate against the truth as each defendant attempts to make his/her testimony conform with the deposition testimony of the previous defendants. This proved obvious in *Hostrop*.

The most revealing and surprising evidence to me to emerge from the depositions was that Griffith had not been the primary leader in my ousting. Rather, it proved to be Hill, closely supported by Mellecker. Still, Griffith continued along his gauche ways, extending his hand to me just prior to his deposition being taken to which I responded, "I won't shake your hand!" Four years of unemployment in my chosen profession and the demoralization caused to my family by him and his fellow insensitive Defendants in a matter of minutes will never be forgotten nor forgiven.

At last, on May 2, 1974, the trial began...18 days after the death of my father on Easter morning. My father had very much wanted to know the outcome of this seemingly endless litigation. My dismissal had been very hard on him, though he expressed admiration for following through on my convictions. Added to these concerns, my mother suffered a heart attack on Mother's Day, a few days after the trial ended.

The trial began on May 2 and ended on May 10, 1974, seven days in all. Most of the significant events of April 2 through July 23, 1970 were truthfully brought out into the open, particularly through skillful cross examination. In retrospect , written briefs were the least honest as to the actual facts during my employment at Prairie State College. Under oath, depositions proved more accurate, and courtroom testimony proved the most truthful of all. There was on notable exception to this pattern. Kloss consistently lied in his affidavits, during deposition taking, and on the courtroom stand...on significant points.

The trial got off to a bad start from my point of view. The litigating parties were expected to bring with them to the courtroom various documents which each had requested of the other. I had assembled the requested material the day before the opening of the trial. But when I asked James Pappas the day of the trial when he picked me up at my home in Homewood, on the way to Chicago, if I should bring this material, he expressed the opinion that it would not be necessary to do so on the first day. I, therefore, left these materials at home. When we arrived at the courtroom, Scariano saw that we did not have the requested materials. He was told we would have them there the next day...which he seemed to accept. But when it came time to give opening statements, he capitalized on the situation and demanded that we provide him with the documentation previously requested...self-righteously declaring that Defendants had brought what had been requested of them (which proved to be a false declaration on his part). Judge Austin showed great displeasure and ordered that our documentations be in the courtroom by 2:00 PM that day under threat of dismissing our case. LeeOna came to the rescue and brought the materials up from Homewood, 35 miles away. It was obvious that Scariano's lamentations were for effect for the documents which were delivered were not examined that day nor any actually used until the third day of the trial. Meanwhile, my attorneys discovered that the really relevant documents of Defendants had *not* been brought. Minutes of Board meetings were absent. Executive session minutes were withheld even after repeated requests to reveal them. We felt certain that a devastating revelation was contained within one of the executive session minutes pertaining to my request for a hearing. Our educated guess proved correct. But Judge Austin had to be asked to direct Defendants to produce the requested minutes by my attorneys before they complied— first, only the minutes of the regular meetings were produced. It was only after an additional demand that the "smoking gun" executive session minutes were reluctantly produced. It became increasingly evident that the reluctance to produce was based upon the revelations which were produced, viz., the July 23, 1970 executive session minutes reported on previously in Chapter 18. A subsequent executive session minutes in August also showed that Scariano had advised the Board against giving me a hearing, that at best I only had a breach of contract suit, that a hearing would serve no useful purpose.

Defendants won the first day of the trial...only because readied material had not been brought to the courtroom. But it seemed to my attorneys and me that the next six days of the trial were clearly won by the Plaintiff—me.

On the first day of the trial, before going over to the courtroom, Pappas and I stopped by the law offices of Gertz and Giampietro, and discussed strategy. Wayne Giampietro was my trial attorney with Jim Pappas serving as "backup man." In the late afternoon, when the day's proceedings had ended, we returned to Wayne's office where Elmer Gertz joined us for the evaluation of the day's proceedings and for planning the next day's strategy.

The actual courtroom proceedings were for Judge Austin to take status reports and act on minor requests by a score or so of attorneys each morning from 10:00 to 10:30 AM. Then the trial would begin and would last until about 12:30 PM. At 2:00 PM, after a 90 minute lunch break, the trial would resume, lasting until about 4:30 PM. A ten minute break in both the morning and afternoon was also part of the pattern. This, then, was the typical routine followed during the length of the trial.

On the first day and every succeeding day of the trial the seven Defendants were in attendance along with my former secretary who also served as the Board's recorder.

Scariano represented the Defendants and sometimes was aided by one of his two other attorneys or by a law clerk from his law firm. Periodically, a spouse of one of the Defendants would attend the trial, sitting on the right hand side of the courtroom, the side tradition has designated where Defendants and their supporters sit. On the sixth day of the trial, LeeOna sat on the left hand side of the spectator's benches, the side traditionally set aside for supporters of the plaintiff in any given case.

After the preliminaries of Scariano's theatrics with respect to the nonproducing of Plaintiffs' records—income tax data from 1969-1973, all my professional writings: articles and books, all correspondence pertaining to my purported dismissal, etc., the trial began.

Following tradition, Plaintiff is always the first to present his case at trial. It is the responsibility of a plaintiff to build a case that proves that a defendant is guilty of some wrongdoing—be it a criminal or a civil case. In my case, it was my responsibility, through my attorneys, to try to prove that Defendants 1) breached my contract, 2) violated my rights to freedom of expression under the First Amendment, and 3) violated my rights to substantive due process as guaranteed by the Fourteenth Amendment of the United States Constitution.

The strategy employed by Wayne Giampietro was an excellent one. During the first two days of trial—Thursday and Friday—he called each of the seven Defendants to the stand as adverse witnesses. Kloss was on the stand all day on Thursday, the six other Defendants were examined on Friday. This approach of immediately calling to the stand adverse witnesses has several important advantages to a plaintiff. It locks defendants into testimony which later may prove to be perjurious after other witnesses and documents are presented, it does not allow time to become acclimated to the courtroom situation, it lessens the aduteration of testimony. Most importantly, it allows the plaintiff in the case to be become better prepared with his or her answers when called upon to testify...it provides the necessary time to become acclimated to the courtroom environment, and thus reduce nervousness.

Much of what Kloss testified as true were blatant lies. Kloss testified, under oath, that I had requested a hearing in

Scariano's office on July 13, 1970 and that in response he agreed to such a hearing on behalf of the Board. He further stated that he had said nothing to me on April 3, 1970 about the differences in language between the new contract and the previous one. Finally, he claimed I was given a continuing opportunity to respond to concerns expressed by the Board members at the "workshop" held in his home on June 20, 1970. None of these claims were true.

Scariano's attempted rehashing of facts already elicited by Giampietro during his direct examination of Kloss seemed to irritate the judge. Judge Austin insisted that only refutation or clarification of facts be done on redirect examination, that new points be postponed until Scariano presented Defendants' defense. Kloss was incapable of refuting documented evidence introduced by Giampietro showing that it had never been the intention of the Board to have ever afforded me due process—notice, advance written charges, a hearing in which there would be an opportunity to present witnesses on my behalf, and to cross examine any witnesses of the Defendants. The executive session minutes of July 23, 1970 plainly showed that Ashley Johnson had been offered the position of President on July 22...and that Johnson had accepted the position *prior* to my dismissal. To claim a fair hearing would have been given to me on July 23 was a transparent sham.

On the second day of the trial, the other six Defendants were skillfully examined by Giampietro and Pappas. Mellecker and Porter admitted that they had not even attended the July 23 Board meeting—the meeting in which other Board members claimed I would have been given a fair and impartial hearing. Instead, both admitted that Hill had contacted them by telephone prior to the meeting and asked them how they wanted their vote to be recorded with respect to the contemplated dismissal action. Both said they voted for my dismissal, which these illegal votes were duly recorded in the minutes of July 23 as though the two Board members had been in actual attendance at the meeting. Such nonpresent voting violated state law and the Board's own policies and procedures. It plainly showed that minds had been made up. No matter what I said or did would have changed their minds. They had closed their minds to any refuting facts which I might have been able to have presented.

Griffith was compelled to admit on the stand that *prior* to the July 23 meeting he had contacted the Editor of the *STAR* and had informed him that if I did not resign by Thursday, I would be dismissed. This admission was further evidence of the total disregard of the elementary rudiments of due process as required by the Fourteenth Amendment.

On the stand Kloss, Porter, Mellecker, and Hill each admitted that their minds had been made up for taking dismissal action if I refused to resign. The other three Board members, though not as direct with their answers as to their intended action, did not flatly deny that their minds, too, had been made up. In fact, each Defendant admitted that the meeting of June 29, later reset to July 6, 1970, was never held, at which time I was supposed have been given the opportunity to respond to the concerns expressed to me on May 25 at Kloss' house. Moreover, for the first time, Defendants admitted that they had secretly, in contravention of state law, met with Scariano at Kloss' house on July 8 and again on July 11 at Scariano's office for the sole purpose of deciding how to best secure my resignation or to dismiss me if I did not "cooperate." Ironically, Scariano, as a state legislator as well as being an attorney, was the author of the Illinois Open meetings Act, an Act he flagrantly violated when it suited his purpose.

The examination first of Defendants as adverse witnesses had paid off. There were sufficient admissions by them to clearly show that there had been a breach of contract, that there had been a stifling of freedom of expression, and that due process had not occurred...and Kloss had perjured himself by stating I would have been given a fair and impartial hearing when the July 23, 1970 Executive Session minutes clearly showed otherwise.

On Monday, May 6, 1970, Dr. Jake Olivar, a medical pathologist and a survivor of the infamous Bataan Death March of World War II was the first witness to take the stand on my behalf. This past President of the Chicago Heights Rotary Club testified as a character witness on my behalf. Though his testimony was brief, it was helpful by somewhat counteracting the illusion Defendants tried to create that I was less than an honest and forthright person.

Next to take the stand was Dr. Dale Collins, Chairman of the Board of Trustees of Prairie State College from 1966-1969, and a member of during the 1969-1970 academic year. His testimony proved damaging to several claims of the Defendants.

Introduced into evidence by my attorney Wayne Giampietro was a letter of recommendation written on my behalf by Dr. Collins in February of 1970. The recommendation gave a diametrically opposed view of my character and professional performance than that which Defendants enunciated from the stand. Scariano attempted to disparage Dr. Collins' evaluation of me which only antagonized the former Board Chairman. Dr. Collins silenced the courtroom when he forcefully declared that with militant faculty unionism and black student demands during my tenure in office, "Jesus Christ Himself could not have solved all the problems of the college!"

Perhaps of even greater significance was Dr. Collins' testimony that at the April Board meeting, at which time my contract was being considered, Mellecker had drawn his attention to the sample, blank contract form provided to the Board in advance of the meeting where she pointed out to him that it did not include the words "...and will devote full time to said employment." Dr. Collins testified that he told Mellecker that in his judgment those words were not important in the contract, the important thing during this trying historical period was for the college to maintain the continuity of the administration. This testimony was in direct conflict wit the testimony of Kloss, Hill, and Mellecker...all of whom claimed that they were unaware of such a "deletion" until two or three weeks after the contract had been tendered. Dr. Collins' testimony supported my claim made in previous depositions, and later on the stand, that Kloss had brought the subject up via telephone the very next day after the contract had been offered and accepted. At no time was I asked to have the contract amended to include "...and will devote full time to said employment Had I been asked to do so (my first contract had been amended for another reason), I would have agreed to do so without any hesitation whatsoever. The only reason those words were deleted from the previous contract was because such words were now superfluous. Prior to written policies and procedures (which I was responsible for having initiated), such contract language might have been important...but, except for a salary designation, a contract for the president of the college was really not necessary. All his duties and responsibilities were clearly spelled out in detail in the Board's codified *Prairie State College Policies and Procedures* manual. I wouldn't have even made a change then, except for the fact that my secretary, Meredith Pommer, *upon her own initiative,* had brought in the existing contract and asked me if I wanted to make any changes in the form. It was upon the above reflections of a now established policies and procedures manual, that upon reviewing the form I concluded that the words "...and will devote full time to said employment" was superfluous language.

Following my two very helpful witnesses, I took the stand...for the next three days—Monday through Wednesday—13 hours in all.

In order to present the reader the view of my tenure at Prairie State College from the discharging Board's perspective, to partially balance my own admittedly biased perspective in this book, what follows is actual courtroom testimony when I was cross examined by Scariano. Also included is pertinent cross and redirect examinations of Defendants...and an opening direct examination by my attorney, Wayne Giampietro, of a particular area especially relevant to those in the academic world.

BY MR. GIAMPIETRO:

Q Dr. Hostrop, in regard to authoring books, are you aware of any books which have been published by other college presidents?

A Yes.

Q Do you recall specifically any such books?

A I remember specifically two books of two community college presidents here in Illinois.

MR. SCARIANO: Objection, Judge. I don't know what this has got to do with this case. I would move to strike that testimony and to get on to another inquiry, because it is not relevant to the issues in this case.

THE COURT: As I understand it, this is one of the charges that were made.

MR. SCARIANO: He is talking about other college presidents. We didn't hire other college presidents, we hired Dr. Hostrop. He is the only president working for us.

THE COURT: As I understand his testimony, of course, you haven't had a chance to refute it yet, he said one of the reasons he was allegedly fired, was because he wrote some books.

MR. SCARIANO: I don't know what the relationship or contracts of other college presidents is with their schools.

THE COURT: Well, I mean, are you telling me there is something in that contract that he is not permitted to write books?

MR. SCARIANO: Well, he deleted the clause to devote full time to his duties which is one of the main charges in this case. I don't know what other college presidents have.

THE COURT: Well, I mean, does that mean that you own him on Saturdays and Sundays and he can't participate in anything other than go to the college and work on his—

MR. SCARIANO: No sir. When we get on to our case, I think I can demonstrate to your Honor what we mean by that, but I don't know what other college presidents and what they do in other schools have to do with this case?

THE COURT: Other than if other college presidents are permitted by the Board of Trustees to write books on time other than the time that they are supposed to devote to this college—

MR. SCARIANO: Other colleges may permit their presidents to have gold knobs on their doors, Judge, that doesn't mean we have to do it.

THE COURT: Well, I am unaware at this time that you have anything barring him from writing books at a time when he — and when it is his time. I don 't know whether he wrote this on his time or your time or whose time, but I would say that if it is a practice for other colleges to permit their presidents to write books, as long as it does not interfere with their duties as president of the college, that it is relevant until I find out that there is something in this contract of yours that says you can't write books on Saturdays and Sundays.

BY MR. GIAMPIETRO:

Q Dr. Hostrop, in regard to Plaintiff's Exhibits 30 and 31 for identification, when did you work on the manuscripts for those books?

A Saturdays and Sundays and late evenings.

Q Did you ever, at any time, work on the manuscripts for those books while you were at the college?

A Absolutely not.

Q Now, I ask you again, Dr. Hostrop, if you are aware of any specific other books that were written by other junior college presidents?

A Yes, I am.

Q Can you tell us the names of those books?

A Yes, one is by President Robert Lahti of William Rainey Harper College, in Pallatine, Illinois, a community college, the same as Prairie State College.

Q Is there another one or others that you are aware of?

A Another is by Charles G. Hurst, former President of Malcolm X College.

Q Dr. Hostrop, I show you what has been marked for identification as Plaintiff's Exhibit 40, and ask you is that one of the books to which you have referred?

A Yes, it is, "Innovated College Management," by Robert E. Lahti.

Q Does it indicate in that book whether he has a position of any kind in connection with any school?

A Yes, it does.

Q What does it indicate?

A Describing the author on the book jacket, it says, "Robert E. Lahti, President of William Rainey harper College."

Q I will show you what has been marked for identification as Plaintiff's Exhibit 41, and ask you if you can tell us what it is?

A This is a book by Charles G. Hurst, Jr. entitled, "Passport to Freedom, Education, Humanism, and Malcolm X."

Q Did you, Dr. Hostrop, at any time take any time from your duties as president of Prairie State College, to consult with either your editor or publisher regarding books which you wrote?

A Yes.

Q How much time did you spend in regard to that?

A I believe I entered into a contract to write "Orientation to the Two-Year College," in October of 1969. The book was completed outside of college hours, Saturdays, Sundays, evenings, on or about December 29, 1969. However, it should be mentioned parenthetically that one-third to one-half of the book had been completed before I even came to prairie State College.

There were several times in which I also met with the editor after that date, as it went into composition. There were approximately eight times in which I saw the manuscript editor or the president of Learning Systems in connection with the writing of the book.

Q During what times of the day did you see—

A Generally, it would have been in the late afternoon, usually after 3:00 o'clock, for approximately an hour.

Q Did you take any time from your duties as president of Prairie State College to consult with your editor and publisher?

A No.

Q Will you explain what you mean by that?

A I never ate lunch. It was not my practice, and because

I never ate lunch, I never took coffee or cigarette breaks, I would use that time. I felt within myself I was not depriving the college the few times that I did see the editor since I never take luncheon breaks and I tried to confine the amount of time, the few times that I did go there, to approximately an hour.

## CROSS EXAMINATION

BY MR. SCARIANO:

Q Dr. Hostrop, when was the first time you put anything on the agenda with regard to the memos of May 25 or June 12th?

A Never.

Q Did you take part in the discussion when Mr. Cooke brought these matters up from the floor on June 18 or July 1?

A I can't recall.

Q All right, since the first time you talked with the Board on Ethnic Studies, the flap that it created through the memo of May 25, what was said by the Board members and what was said by you?

A I was not permitted to speak at Mr. Kloss' house as I have testified.

Q Just tell me what was said Doctor. I didn't ask you whether or not you were permitted to speak.

A I thought you asked what each of us said?

Q That is right.

A The Board members, the majority, not all, stated that I had been out of line to prepare the memorandum in the first place. I should have known it would have engendered a great deal of controversy, and I had no right to write it. I did make a response at the very end of the meeting.

Q What was the response?

A I commented that the Board could be assured that anything which I wrote or anything I spoke would only be within the Board's policies and procedures.

Q Isn't it true, Doctor, that what the Board members told you at that meeting [at Lester Kloss' house] or any other time that it was brought up, was that it was unwise to write a memo in view of the history of the birth of the program?

A. No.

Q You have got a curriculum that you represented to the Board of Prairie State College and to the Illinois Junior College Board was going to be a four semester course leading to a degree, associate arts degree in African-American Studies. The program contained Afro-American History, African Civilization, Cultures and Peoples of Sub-Sahara Africa, Race Relations from a Black Perspective, Politics and the Black Community, Economic Problems of the Afro-American, Psychological Adjustment of Afro-Americans, Afro-American Literature, Elementary Swahili, and Survey of Afro-American Art. You put all of that together in one program, you give it its own department, its own identity, the identity these people were seeking for themselves and then you are going to disperse it and put it back in a different departments. Isn't that what you were proposing?

A Yes.

Q Okay, and you thought it was wise?

A Yes.

Q And the Board didn't think it was wise, isn't that right?

A I don't know.

Q They told you so, didn't they?

A No.

Q What did they tell you on June 20th at Mr. Kloss' house?

A They said I had no right to write the memorandum in the first place.

Q Did they tell you to expunge it from the record?

A No...

Q Now, the first discussion to come of the memo of May 25, 1970, and the memo of June 12, 1970 [to the Board], you said, was at the meeting of June 18th with the Board, is that right?

A I believe so.

Q All right. Then you said there was a discussion at the Kloss home on June 20th?

A Yes.

Q All right. Now, have you told us everything now on cross-examination that was said there at Mr. Kloss' home regarding the Ethnic Studies Program?

A To the best of my recollection, yes...

Q In your memo to the Cabinet of May 25, 1970, it states, "The proposals suggested for consideration would become effective July 1, 1970," isn't that right?

A Yes.

Q How many Board meetings would there be between June 12 and July 1 of 1970?

A Probably one.

Q You gave the memo of June 12, 1970 that you wrote to the Board the night of graduation, isn't that right?

A Yes.

Q And you gave it to them only because the "Post Prairie Statement" was coming out, isn't that right?

A Yes.

Q Okay, and you state, "As a consequence I have been put in a position of replying to a bootleg discussion memo which has been taken as a policy statement," right?

A Yes.

Q Okay, so if it had not been for the "Post Prairie Statement" coming out, heaven knows when the Board would have gotten some idea that you were planning on implementing a program they had never even heard of?

A...I am not at all certain that anything would have ever been presented to the Board of Trustees.

Q Despite the fact that you were planning on implementing a program on July 1, 1970?

A I never stated that I was planning to implement anything on July 1st of 1970.

Q Well, I am not going to argue about what the—

THE COURT: You are now referring to what it says in the May 25th thing?

MR. SCARIANO: Absolutely, Judge. The thing speaks for itself.

BY MR. SCARIANO:

Q But that is all you can tell us then about everything that you and the Board have discussed from June 12 to July 23, 1970 with respect to the Ethnic Studies Program?

A As a Board, yes.

Q Did you talk to the Board members individually about it?

A Yes.

Q Who?

A Mr. Kloss.

Q When?

A In your office on July 13, 1970.

Q Okay, but that was not with the Board. Okay?

A You asked the question about individuals.

Q That is right, I asked you. Anybody else?

A No.

Q And you testified on direct that we did discuss this at our meeting of July 13th in my office, isn't that right?

A Yes.

Q Okay. What was said there about the Ethnic Studies Program, between the three of us?

A I said very little at that meeting, as I previously testified, and Mr. Kloss said the writing of the memorandum was one of the reasons why the Board would discharge me if I did not resign..

Q It wasn't really the writing of the memorandum but the way the matter came out, namely, that you were planning a program without consulting with the Board, putting an implementation date on it and taking it for granted that you could do this without going to the Board for prior approval or discussion; isn't that what we talked about?

A No.

Q What did we talk about, Dr. Hostrop?

A Exactly as I have just testified, Mr. Scariano, I was told that I was to be dismissed—one of the reasons for discharging me was for writing the memorandum of May 25, 1970.

Q That was told to you by Mr. Kloss?

A Yes.

Q All right, if you wanted to do some outside activity like writing, lecturing, teaching, would you seek approval of the Board or would you just inform them of the activity?

A If it were an inflexible use of my time, then I would seek formal advance approval. If it was not an inflexible use of my time, so long as I carried on my responsibilities to the college, I would not, in accordance with the policy of the Board.

Q Let's go back one minute to the July 1 meeting with respect to the Ethnic Studies Program: Mrs. Hill chaired that meeting, did she not?

A She chaired the meeting.

Q And the item came up from the floor?

A Yes.

Q Mr. Cooke brought it up?

A Yes.

Q And Mrs. Hill said that that was not before the Board for consideration, isn't that right?

A Yes.

Q She told Mr. Cooke that the Board wasn't going to do anything with respect to ethnic studies, isn't that right, at that meeting?

A Mrs. Hill told Mr. Cooke that no restructuring of the program can be done without Board approval and that Mr. Cooke should discuss this with Doctor Hostrop.

Q That is where the matter was left, isn't that right? You were to discuss it with him?

A Yes.

Q Subsequently, Mr. Kloss wrote a letter to Mr. Cooke, isn't that right, about the Ethnic Studies Program, telling him that there would be no changes by the Board that year?

A Yes.

Q All right, when the Board said, on July 1, at its meeting, and when Mr. Kloss wrote to Mr. Cooke and said that the Board was not contemplating any changes in the Ethnic Studies Program, what effect did this have on you?

A It further reinforced the idea that there was to be no further discussion by the administration to consider any changes for the following year.

Q Was this said to anybody?

A Yes.

Q To whom and by whom?

A Mrs. Hill on June 18th, 1970, I believe.

Q That was at a meeting, isn't that right?

A Yes.

Q What did Mrs. Hill say at that meeting about the Ethnic Studies Program?

A She made a public statement that neither the Board nor the administration had any plans to change the Black Studies Program for the following year, or words to that effect.

Q What effect did that statement have on you?

A That was the beginning of my stopping any further discussion with the administration on the plan. Nothing further was done.

Q All right, nothing was said though that you, yourself, couldn't talk about this?

A No.

Q All right. You rather resented that the Board, on June 18th and on June 1, said that there would be no changes in this program, isn't that right?

A No.

Q All right, you rather resented that Mr. Kloss wrote to Mr. Cooke and said that there would be no changes, isn't that right?

A No.

Q You were of the opinion that the Ethnic Studies was formed in a precipitous fashion, isn't that right?

A Yes.

Q You resented Dr. Griffith and Mr. Hannigan and Dr.

Jackson going to talk to Mr. Cooke to allay his fears about changes that were contemplated or might be done in the Ethnic Studies Program, isn't that right?

A No.

Q Dr. Hostrop, I show you what has been marked as Defendants' Exhibit 17 for identification. You have seen a copy or the original of that before, have you not?

A Yes.

Q All right, you wrote a letter to Bill Staerkel who was Chairman of the Council of Presidents of the Community Colleges in Illinois, is that right?

A Yes.

Q All right, and you sent him this handwritten letter which is attached and addressed, "Dear Bill," dated July 26, 1970, from somewhere in South Dakota."

A Yes.

Q You were on vacation at the time?

A Yes.

Q All right, and you told him you were on vacation and you are telling him about your termination at Prairie State, right?

A Yes.

Q Okay, on Page 3, did you tell Bill Staerkel—"As a result of the past three months in particular, however, I believe I know what the fundamental questions are. They include, one, who is to administer a college, the president or the Board of Trustees? Two, who makes professional decisions, the president or the board of Trustees?"

You wrote that to Doctor Staerkel?

A Yes.

Q Isn't that what the issues in this case are all about, Dr. Hostrop?

A It is far more complex than that. That was one of the issues…

Q Tell us about the complexity of these problems, Doctor.

A In addition to those, there is the question of First Amendment and Fourteenth Amendment violations.

Q Which are contained in your Complaint, which you alleged in your Complaint?

A Yes.

Q I show you a document which has been marked Defendants' Exhibit 18 for identification, Dr. Hostrop; to whom is it addressed?

A Illinois Junior College District 515.

Q From whom?

A Richard W. Hostrop.

Q Subject?

A "letter of resignation effective."

Q No date, right?

A Right.

Q Was it written July 12th, 1970?

A I don't believe so. I believe this was written in the evening of July 22nd, 1970.

Q Why did you put July 12th?

A because of the conversation that occurred in your office on July 13th, and it was a matter of back dating it before that event occurred.

Q How many other letters have you back dated, Dr. Hostrop?

MR. GIAMPIETRO: Your Honor, I will object. This is a draft. It is a letter that was never sent or put in any other form.

MR. SCARIANO: He just stated, Judge, that he apparently never puts the right date on these letters.

MR. GIAMPIETRO: Your Honor, he did not say anything close to that.

THE COURT: I am aware of what he said. Let's not quarrel about that.

BY MR. SCARIANO:

Q Are you in the habit of back dating letters?

A No.

Q All right, how many other times have you done it?

A Offhand, I can't remember any other time.

Q There are other times?

A I can't recall any other times?

Q Defendants' Exhibit 13 for identification, dated July 24, 1970, is that the correct date on that letter?

A No.

Q All right, what is the correct date on that?

A July 22nd, in the evening, or July 23rd.

Q And the other one has how much of a time gap, the July 12th letter?

A Twelve days.

Q So you said this Defendants' Exhibit 13, which is dated July 24, may have been written as early as—

A July 22nd, in the evening.

Q All right, so you had knowledge at least of the complaints listed over here against you by the Board at least as of that date?

A Yes.

Q All right, can you tell us why you wrote this letter of resignation, Doctor?

A Yes.

Q Tell me?

A Because in your office you stated that I had the choice of submitting a resignation or being terminated, and I gave serious consideration to resigning.

Q Why did you date it July 12th when you met with me July 13th?

A For that very reason.

Q What has the date got to do with it?

A I think it became common knowledge, or it could have become common knowledge, that we had a meeting in your office at that time.

Q What is wrong with that?

A I don't think anyone likes to resign under fire, Mr. Scariano.

Q Well, you were not told to not tell anybody that you met in my office, were you?

A No.

Q Mr. Kloss called you on July 11th to tell you to be in my office, isn't that right?

A Yes.

Q And you came?

A Yes.

Q All right, you must have had some idea?

A No.

Q This letter would indicate that you must have had some idea?

A No.

MR. PAPPAS: Judge, he has testified he wrote that on the 22nd of July.

MR. SCARIANO: Oh, did he?

MR. PAPPAS: Well, he testified to it.

BY MR. SCARIANO:

Q Did you write this on the 22nd of July, Doctor Hostrop?

A To the best of my recollection, it is July 22nd.

Q Weren't you in communication with Mr. Pappas while you were on vacation?

A Yes.

Q He told you about the actions of the Board, isn't that right?

A Yes.

Q You asked him to get a statement of charges, didn't you, from the Board?

A I don't believe so.

Q Did you ever get a statement of charges while you were on vacation from anybody, including your attorney?

A No.

Q Now, Doctor, did you or anyone acting in your behalf disclose to the news media the statement of charges upon which the Board terminated your services on July 23, 1970?

MR. GIAMPIETRO: Your Honor, I am going to object. I don't see what possible relevance this could have to this case, something that happened after the action was taken.

MR. SCARIANO: Now, I would submit your Honor, Mr. Giampietro ought to read his Complaint. He is talking about the damage that has occurred to Dr. Hostrop over here and I submit that if Dr. Hostrop is the man who is disclosing this to the media, he can't blame us.

THE COURT: Well. I don't know, certainly by this time the media must have known that he had been terminated.

MR. SCARIANO: The media did not know the reasons until he gave them. That is what we are ready to prove.

THE COURT: Well, the fact that he was involuntarily terminated is no shining medal for him to wear with pride.

MR. SCARIANO: No, but all these cases dealing with 1983, 1985, et cetera, talk about a man's standing in the community, and how it is jeopardized and what it does to be charged with such things as deceit and dishonesty and immorality.

THE COURT: Well, I would think the mere fact that he was involuntarily terminated does not enhance his stature.

MR. SCARIANO: But the Court of Appeals, if you read the Court of Appeals opinion—

THE COURT: I laugh every time I read a Court of Appeals opinion, too, and I don't blame you for laughing. One came down yesterday that I am uproarious about.

MR. SCARIANO: Well, Judge, I don't like that opinion—

THE COURT: Not in my case.

MR. SCARIANO: I don't like it any more than you do, but the fact is that they talked about some of the things that we charged Dr. Hostrop with, and they think that we are the people who publicized this information to the community. I think we should be given—

THE COURT: I don't care what the Court of Appeals thinks, and I have told them to their face, because they are reversed more often by the United States Supreme Court than they reverse me, so—

MR. SCARIANO: Well, the first thing that Mr. Giampietro and Mr. Pappas are going to do, they are going to go up to the Court of Appeals and say, "Look what this man," or "What this school Board did this to this man. They have damaged his reputation in the community, his community standing is affected," and we are ready to make an offer of proof that Dr. Hostrop was the one that disclosed these charges.

THE COURT: You just indicated to me what you just said that they are going to lose this case and as a result go to the Court of Appeals.

MR. PAPPAS: You think that maybe we ought to stop right here? He decided it for everybody.

THE COURT: I might ask him now for his findings of facts and conclusions of law before we get through.

MR. GIAMPIETRO: I am sure he has got them prepared.

THE COURT: I don't know why you decided that he is going to have to go to the Court of Appeals.

MR. PAPPAS: Well, he is trying my case, Judge.

MR. SCARIANO: We are both entitled to make our record...

Q Dr. Hostrop, I show you a document that has been marked Defendants' Exhibit 19 for identification, a clipping from the front page story from the Homewood-Flossmoor Star of September 10, 1970, which purports to contain a statement which you are alleged to have made to them, is that right?

A Yes.

Q Did you give them that statement?

A Yes.

Q That is the first time that the statement appears in print, isn't that right?

A In toto.

Q All right. Do you have any direct quotes contained in newspaper clippings made by anybody else embracing these charges.

A I don't know if they are direct quotes or not.

THE COURT: All I can do is say that the Star is more accurate than any of the four Chicago newspapers.

BY MR. SCARIANO:

Q You gave them the statement, isn't that right?

A Yes.

Q And they contain the charges as they were made available to you by your attorney, I presume?

A That were made available when I returned from my vacation trip.

Q Okay, those are the charges upon which the Board acted in this case, isn't that right?

A Yes.

Q Okay. Now, in preparing for meetings you would prepare the agenda, the back-up material, and you would attend all of the Board meetings that you could, isn't that right?

A Yes.

Q Now, Doctor, I show you what has been marked Plaintiff's Exhibit 2, which purports to be the contract of 2 April, 1970, and this is the one where you testified that you caused to be deleted the phrase "and to devote full time to his duties"?

A Or words to that effect.

Q Now, when you took those words out, you did not bring them to the attention of the Board, isn't that right?

A That is right.

Q Doctor, I show you what is marked Defendants' Exhibit 20 for identification and ask you if that isn't the memo you wrote on March 27, 1970?

A Yes.

Q And it is your memo of explanatory information for the Board meeting of April 2?

A Yes.

Q Now, you start at the bottom of the page with Item H-K, "Executive Session, President's Contract," and you go on to the next page and the page after that, Page 4, and you go almost all the way through this memorandum talking about the contract and what it should contain, isn't that right? You talk about fringe benefits, you talk about salaries, comparative standing—

A Not what it should contain, but I do discuss the contract.

Q Okay, but not one word of those three pages or more indicating to the Board that you are taking something out of last year's contract?

A No.

Q Did you send in that packet of materials a copy of the contract which was in existence at that time?

A No.

Q All right, so there was nothing said about this deletion until it was brought to your attention by one of the Board members, isn't that right?

A Yes.

Q Now, the year before, in a similar memo, you had discussed your contract at length with the Board, isn't that right?

A I don't recall.

Q Well, let's get it out. It is March of 1970.

THE COURT: Well, assuming he did, what of it?

MR. SCARIANO: Well, the fact is, Judge, that he meticulously explains everything in the contract that he wants to bring to the Board's attention, and I just can't understand why he did not bring this one out.

Q Doctor, I show you what has been marked as Defendants ' Exhibit 21 for identification and ask you if you have seen this before?

A Yes.

Q All right, this is a letter from you to Dr. Collins, isn't that right?

A Yes.

Q And you are talking about your contract for 1969, is that right?

A. Yes.

Q All right, and you are indicating to him such matters as "you will also note that an item 4 is provided."

A Yes.

Q All right. The whole matter is about the contract, isn't that right?

A Yes.

Q All right, and you are telling him, "I very much appreciated your concern and counsel regarding an extended contract. A two-year contract would be fine."

A Yes.

Q Okay, and now you are looking for a two-year contract because you are seeking to build up your retirement benefits, isn't that right?

A Not initially. This was not initiated by myself, but by Dr. Collins. This is a follow-up to a conversation that we had.

Q (Reading) "Perhaps a three-year one would be even better, inasmuch as a three-year contract would guarantee having five years service in Illinois, which is necessary in order to meet the minimum service requirement for some kind of retirement pension from the state."

A Yes.

Q (Reading) "Obviously if an intolerable situation should result, notwithstanding the foregoing of any retirement benefits, I would resign." That is your letter, right?

A Yes.

Q Okay, you bring up again retirement the next time the contract comes up, isn't that right?

A I don't recall.

Q Well, the memo will speak for itself. You got the two-year contract you were seeking in 1969, in April

A No.

Q What did you get?

A It wasn't what I was seeking. It was what Dr. Collins felt would be in the best interest of the institution. It was his initiation that a written contract be presented because the previous year I didn't have any written contract.

Q I show you a document which has been marked

Defendants' Exhibit 22 for identification, and I ask you if that isn't the back-up letter for matters to be considered at the meeting of the 20th of March, '69?

A Yes.

Q Okay, there is about a page devoted to what you would like to see your contract contain, isn't that right?

A Yes.

Q Now, you have stated that there were two reasons, half of the reason being the Townsend matter [simultaneous dual-employment of one of the faculty—full-time at Prairie State College and full-time at a Chicago City College], for deleting this clause, isn't that right?

A Yes. [Legal counsel had advised the Board that he could not be dismissed for such dual employment.]

Q And the other one, half being policies and procedures which require, apparently, people at the college to put in full time anyway?

A Yes.

Q And you were given Plaintiff's Exhibit Number 9 to illustrate that policy requiring full-time devotion to duty?

A Yes.

Q That policy was adopted in 1968, isn't that right?

A Yes.

Q Well, why wasn't it a good excuse when you were drafting your previous contract to leave it out if policy and procedures were sufficient guidance?

A I believe that the Townsend matter hadn't arisen at the particular time the previous year. No thought was simply given to it.

Q I am not talking about Townsend now. You said Townsend was only half of it. I am talking about the other half.

A I think the Townsend matter was the precipitating factor.

Q Doctor, you stated that there were two reasons, and if I can put it in what I think were your words, you say half the reason was the Townsend matter and the other half was that you didn't need it because Board policy required you to work full time anyway. Now I am asking you, it required you to work full time as early as 1968, so why didn't you take it out of your previous contract?

A I really don't have an explanation other than the fact that in the 1968-69 academic year I had no written contract whatsoever.

Q But you did come up in '69 and you got a contract, namely Plaintiff's Exhibit 1, isn't that right?

A There was no written contract that preceded that one. I was working without a written contract the prior year.

Q Dr. Hostrop, this April 2 meeting, you were not present in the executive session, you were excused after a brief executive session not involving your contract, isn't that right?

A I don't recall the first part of the executive session, but it is true that for most of the time I was absent when my contract was being discussed..

Q All right, now, when that contract was signed, you say that that happened the same night, April 2, 1970?

A It actually, I believe, was in the early hours of April 3rd, yes, 1970.

Q All right, the executive session is over. What happened after that?

A Then the Board chairman, the Board secretary, the Board recorder and myself went into the Board recorder's office.

Q The whole meeting, not only the executive session, but the whole meeting was adjourned, right?

A Yes.

Q Okay, and you went into the Board recorder's office and what happened then?

A The original copy of the sample blank contract form that had been provided for the Board in advance of the meeting—

Q By you?

A Yes...was given to the Board recorder as she sat at her typewriter and the Board chairman and the Board secretary directed her to fill in the various blanks and to make the one sentence line on Page 2, which I believe said, "Other benefits per previous contract." After that was the Board chairman first signed the contract, then the Board secretary and then I did.

Q You signed that same night?

A I can't recall at this time if it was at that time or if it was the next morning, I just can't recall, but it was that day.

Q You issued a memo dated April 13th with back-up material for the April 16 meeting, isn't that right?

A I believe so.

Q Dr. Hostrop, I show you Plaintiff's Exhibit 32 for identification and ask you if that is not the memo you have just referred to?

A Yes.

Q The very next meeting after your contract has been approved?

A Yes.

Q And "B" talks about the better part of a page on the professional activities of the President?

A No.

Q Well, what does it talk about?

A I would say about a half page.

Q Well, we will measure it later...Why did you not bring these activities of the President to the attention of the Board just two weeks before when they were considering your contract instead of waiting until April 16th?

A The previous Board was pretty much aware of my activities in general, having been with me for a year. The main objective by far of providing that information at that time was because we had new incoming Board members.

Q Only two?

A And it seemed a logical time to simply inform the new people in particular and bring up to date, if you will, the holdover members of professional activities of the President.

Q And this "activities of the President" has nothing to do, you are telling us, with the deletion of the clause two weeks before?

A Absolutely not.

Q Rather coincidental, isn't it?

THE COURT: That is a question to argue to the jury.

BY MR. SCARIANO:

Q "The Board will be interested to learn that I have written professional articles which have recently been accepted for publication, that two books concerned with learning and adjustment to college will be published this year, that I have been appointed to the editorial Board of the Library College Journal and that I have been asked to be a manuscript editor for Shoe String Press in the areas of educational libraries and computers."

How many of the seven members of the Board knew this on April 2?

A Well, I think all of the Board members knew about the books "Orientation to the Two Year College" and the "handbook for Achieving Academic Success." I believe they must have known that.

Q You believe they must have known that?

A Yes.

Q You are not sure?

A I am not positive.

Q What else do you think that these other Board members knew about this activity?

A I believe that was all.

Q All right, "There may come a time in which I may wish to teach a graduate class on the community college for Governor's State University. Should this or a similar activity occur which results in my time not being flexible, I shall seek advance approval of the Board. I would like you to know about this future request. Should I have this opportunity, it would probably require one evening per week in which I would be tied down to a non-Prairie State College activity. If and when this opportunity should arise, I would hope the Board would feel this activity would be considered appropriate and that my flexibility to the college would not be materially reduced."

The only thing that you are asking here is that if you get this job at Governor's State University you would want approval, isn't that right?

A Yes.

Q All right, but apparently you did not bother to talk about approval with respect to anything else?

A It was not necessary, Mr. Scariano.

Q In your opinion?

A In the opinion based upon policies and procedures of the Board.

Q I show you what has been marked Defendants' Exhibit 24 for identification and ask you if that is not the letter I referred to earlier this afternoon with regard to the Ethnic Studies, Mr. Kloss telling Mr. Cooke that there would be no change.

A Yes.

Q And, now, after you have seen it your answer is still the same, that this did not upset you, Mr. Kloss telling Mr. Cooke that there would be no change in the Ethnic Studies Program?

A To the question using the word "upset" yes, it did upset me.

Q Well, maybe I used the wrong word before; did the Board say anything on June 18th that there would be no more discussion with respect to changes in the Ethnic Studies Program to the audience that night, did that upset you?

A No.

Q Were you upset when Dr. Jackson, Dr. Griffith and Mr. Hannigan went to see Mr. Cooke to tell him that there would be no changes made in the Ethnic Studies Program?

A Yes.

Q I show you what has been marked as Defendants' Exhibit 27 for identification, and it has a letterhead and it says "Innovations," can you tell us what that is? [ Exhibit 27 was never shown to Meredith Pommer, my secretary and the Board's recorder. I had gone though some old papers in my office that were in my brief case and had thrown it, with other papers, into my wastepaper basket. Unbeknownst to me she rifled my wastebasket, retrieved this exhibit, and gave it to the Board as a means of showing her "loyalty" to them.]

A When I was in California a small company was formed for a very brief period of time. I had developed a test and it was a combination intelligence test and achievement test, plus there were several simulations which I had written while I was in California, but it did not exist once I came to Illinois.

Q You talked yesterday about the William Rainey Harper College Salary Survey?

A Yes.

Q It is a junior college in Palatine, isn't that right?

A Yes

Q You stated that you had that salary survey but you did not give it to the Board because it contained reference to only two Illinois colleges, as I recall it?

A Yes.

Q It contained, I think, a reference to Dallas?

A I believe so.

Q And that is why you didn't give it to the Board when you discussed with them comparative salaries of community college presidents?

A There were more than just the three colleges you mentioned. I believe it was five to seven.

Q Right.

A Different colleges at which Prairie State, if my recollection serves me, was the smallest of those listed in the survey.

Q And you concluded it would be of no use to your Board?

A No, I did not conclude that. I thought, on the contrary, that it would be unethical to present it to them because it would give a false picture as to what I deserved as compared to community colleges of larger colleges.

Q Why would William Rainey Harper, an Illinois college, undertake such a study if it wouldn't be of any use to an Illinois college?

A The survey was designed to assist the president of William Rainey Harper with his contract.

THE COURT: In getting a raise?
THE WITNESS: Yes, sir.
THE COURT: Okay. That is a good, selfish reason.

BY MR. SCARIANO:

Q The four professional articles that you mentioned in that memo for the April 16th meeting, when were they written, Doctor?

A To the best of my recollection, they were written in the years '66, '67, '68 and maybe '69.

Q And you have talked to us about when the two books were published, the Orientation—

A Yes, sir.

Q Now, you have stated to me frequently, and you have written to the Board—I show you Plaintiff's Exhibit 51 for identification, "Request for a Faculty Position," addressed to Prairie State and would you tell us again what the essence of that letter is?

A Yes. I reminded the Board that I had never been offered a faculty position at the time of termination by the Board on July 23rd, 1970, notwithstanding the fact that I had faculty tenure under the Board's policies and procedures, that I would like to have a faculty position at the college without prejudice to this litigation, and that I would strive to do an outstanding job as a faculty member.

Q All right, and you stated to me as recently as the last time I took your deposition that you still consider yourself to be the President of Prairie State, is that right?

A Yes.

Q All right, and you have told me that on other occasions, too.

A Yes.

Q All right, when you write a letter to these schools from which you seek a position, do you tell them also that you are President of Prairie State?

A No, never.

Q What do you tell them with respect to Prairie State?

A I make no mention of Prairie State other than the fact that I was employed as President for the years 1967 through 1970.

Q And that is all?

A That is all.

Q Do you state the reason why you are no longer at Prairie State in any of these letters?

A No.

Q Okay, you don't send anything to these organizations to whom you apply for work telling them that you are in any way connected with Prairie State except that you were there until 1970 as President?

A That is true.

Q Now, you have listed for Mr. Giampietro, in direct examination totally all of your activities and all of your income since the time that you were terminated at Prairie State?

A Yes, they are all reflected in my income tax.

Q Well, whether or not it is reflected in the income tax, you have told him everything on direct?

A I believe so, yes.

Q Okay, until 1972 I take it you were restricting your hunt for a position to President of a community college or vice-president of a four-year college, is that right?

A In general. I am sure there were some exceptions to that, but not too many.

Q What kind of exceptions?

A Well, there might have been a good position such as the Dean of a college of education, for example.

Q Certainly nothing lower than that?

A Perhaps in one or two instances a professor of higher education, a full professorship. There might have been that in a few instances.

Q How soon after leaving Prairie State did you actively seek employment?

A About August 3rd, 1970.

Q To whom? Who was the first person or organization to which you applied?

A My placement office at UCLA.

Q You got in touch right away?

A Yes.

Q I show you what has been marked as Defendants' Exhibit 28 for identification. What is the name of that?

A College and University Teaching.

Q Do you have an article in there?

A Yes.

Q What page?

A 283.

Q What is the title of the article?

A "Simulations as a Stimulus to Learning and Retention"

Q Now, the issue is autumn of '72, isn't it?

A Yes.

Q Do you have an article in Defendants' Exhibit 29 now, which I am marking for identification, "Educational Technology?"

A Yes.

Q All right, what is the name of that article?

A "Using Media in the Library."

Q You wrote that article?

A Yes

Q Doctor, both of these articles have biographical sketches or at least a description of who Dr. Hostrop is, isn't that right?

A Yes.

Q All right, now, we are looking at Defendants' Exhibit 29 for identification, "Educational Technology," for July '72; what does it say about Richard W. Hostrop?

A "President of Prairie State College, Chicago Heights, Illinois."

Q So in July of '72 and the autumn of '72 you were representing yourself as the president of Prairie State College?

A No.

Q There were a couple of matters that came before the Board during your tenure, the Savage matter, for instance, he came before the board and asked to appear before the board in what connection, Doctor?

A There were two reasons; he had been recommended for transfer to Assistant Dean of continuing education. He did not want to accept that position. At the same time and simultaneously the Vice President of Student Services did not wish to retain him in the student services office as Director of Financial Aids and Placement and had recommended a non-renewal of contract. He was in his first year as an employee of the college. So he asked to appear, at which time he did. There was a presentation made by the Vice President of Student Services, which was not renew the contract of Mr. Savage. I supported that recommendation.

Mr. Savage made a presentation. The Board overruled the administrative recommendation....

Q Dr. Hostrop, the Savage matter that we just discussed is one of the hearings you referred to in your complaint as having been given by the Board, isn't that right?

A I believe so....

Q Okay, was there another matter to come before the Board? You state that there was another hearing in your complaint.

A Yes, that was Mr. William A. Townsend in which there were two separate occasions in which he appeared before the Board.

Q All right, give us the first one.

A I believe it was in the fall of 1967 that Mister Townsend was up for tenure consideration, and the recommendation had been not to grant him tenure upon the recommendation of the then Vice President of Instructional Services. However, Mr. Townsend was represented by counsel and --

Q And the Board was represented by counsel, isn't that right?

A Yes, and it was pointed out by Mr. Townsnend's attorney that Mr. Townsend came under the old Bloom High School policies, which was a two-year requirement rather than the Prairie State College policy, which was a three-year requirement for tenure.

Q There was a grandfather clause?

A There was a grandfather clause, so the matter was dropped. It was acknowledged that he did indeed have tenure via the grandfather clause.

Q All right, Townsend presented people or witnesses in his behalf, isn't that right?

A I believe only his counsel.

Q All right, but counsel was permitted to question anybody he wanted about the matter before the Board, isn't that right?

A Yes.

Q And this is the other hearing you are referring to now?

A There is a second part to this.

Q All right, what is the second part ?

A The second one was approximately twelve months later--it was with respect to the fact that Mr. Townsend had a full-time contract with the Chicago City Colleges System and also a full-time contract with Prairie State College.

Mr. Townsend was requested to come before the Board...and was requested to drop employment one place or the other.

Mr. Al Franke, the Board's regular attorney, was present at one or perhaps both meetings on this. Mr. Townsend, I believe on both occasions, was represented by an attorney from the Civil Liberties Union.

Q Mr. Cornfield?

A I believe it was Mr. Cornfield. And as a result of discussions between the respective attorneys, it was the opinion of Mr. Franke that so long as Mr. Townsend fulfilled his obligations, met his classes, et cetera, at Prairie State, that any other activities which he did aside from that was his own business, and for the Board to pursue the matter further would be to violate Mr. Townsend's civil rights.

Q All right, and Mr. Townsend asked to appear before the Board then when he was given this ultimatum, isn't that right?

A No, he was asked to come before it. He did not ask to come before the Board. The Board asked him.

Q All right, were there any formal charges presented to Mr. Townsend?

A Define "formal charges," please.

Q Written charges.

A No.

Q Is this the other hearing you were referring to in your complaint?

A Yes.

Q Okay. Now Doctor, since you took the position that you were wrongfully terminated and yet you still had a contract as far as you were concerned, did you consider that you did not have to seek any employment during the period of '70 to '72, covered by the dates in that April 2, 1970 document?

A My attorney advised me that I should try to mitigate my damages.

Q And then you tried to seek employment?

A No, I began before that time.

Q Even before your termination?

A Yes.

Q With other colleges?

A With one university.

Q Which one?

A Governors State University.

Q That was on a part-time basis?

A No.

Q Full time?

A Yes.

Q So you were actively seeking a full-time position before the termination?

A Before July 23rd, yes.

Q I give you a copy of what has been marked Plaintiff's Exhibit 33 for identification, a memo of May 16, 1970, where you state, "I frankly do not know how much longer I will wish to remain at Prairie State College"; is that what you are referring to?

A No.

Q What are you referring to there?

A It speaks for itself.

THE COURT: That is a pretty good legal answer and I am going to let it stand.

BY MR. SCARIANO:

Q You had no employment contemplation other than Prairie State when you wrote this memo?

A That is correct.

Q When did you seek the position at Governors State?

A It was between July 13th, when I met in your office, and prior to July 23rd, when I was terminated.

Q All right, in this May 16th memo you referred to receiving offers from other colleges, did you?

A Yes, I believe so.

Q You did have offers prior to termination?

A Not firm offers.

Q Okay, didn't you tell the Board, the members who were at the June 20th meeting, toward the end of that meeting, that you were going to address yourself and correct the deficiencies, omissions and complaints in their concerns as expressed at that meeting?

A Absolutely not.

Q Now, at the meeting in my office on July 13th, Doctor, didn't we discuss the same complaints and concerns that the Board gave you at the meeting in Mr. Kloss' house on June 20th?

A No, only I believe three which I have already testified to.

Q How did the complaints and concerns that Mr. Kloss and I expressed in my office on July 13th differ from those on June 20?

A Well, first of all, on July 13th, the alleged fact that I had not notified Mrs. Pommer that she was to receive an increase in salary was never brought up at the June 20th meeting.

Q Didn't you respond June 22 in your letter to Mrs. Mellecker on outside activities and cover that?

A I believe I did, yes.

Q Okay, so outside activities were covered in both places then?

A Well, I don't know if it was specifically about the book writing, that is all I am saying. And then the memorandum was brought up in both places.

Q Are those the basic differences?

A Yes.

Q Then you are saying that neither Mr. Kloss nor I said things that you heard at the June 20th meeting. Didn't we make reference to matters that you heard at the June 20th meeting?

A No.

Q Not even generally?

A No, there was no reference made to the June 20th meeting in your office.

Q Now, weren't you told at the meeting of July 13, in my office, that the Board was going to have a meeting on or about July 23rd in order to take up the matter of your continued employment with the Board?

A Absolutely not.

Q Doctor, you asked to be heard by the Board at that meeting, isn't that right?

A Yes.

Q All right, you stated you were going on vacation, and I think you were leaving on vacation July 24th, isn't that right?

A Yes.

Q Didn't Mr. Kloss and I tell you that we were there to try to negotiate a settlement of this problem with you?

A In general terms.

Q Right, and I asked you to get counsel to help you do that, isn't that right?

A You also stated that if I didn't want to have counsel that I could see you privately.

Q You said you were going to get counsel that day, isn't that right?

A Yes, it was my last parting remark.

Q Your parting remark, you were going to get counsel and I would hear from him, and I told you that if we couldn't negotiate a settlement, we would get together before you left on vacation in order to resolve this matter?

A No.

MR. GIAMPIETRO: All right your Honor, at this time I am going to object to these questions unless Mr. Scariano represents for the record that he is going to testify, because he is making representations as to what occurred and he is getting negative answers.

THE COURT: He has not testified yet, because all the testimony that I will pay any attention to comes from somebody under oath.

BY MR. SCARIANO:

Q And you were not told at this meeting on July 13th that you would have a chance to be heard by the Board?7

A No.

Q That was the first time you asked to be heard by the Board, isn't that right?

A On July 13th?

Q Yes, and that was oral?

A Yes.

Q Were there any requests after July 13th and July 23rd that you be heard by the Board?

A Not by me personally and directly to the Board.

Q I show you documents which have been marked Defendants' Exhibits 1, 2, and 3 for identification and ask you if you have any knowledge of those communications?

A I don't know when I saw these.

Q But you did see them?

A Yes, in due course.

Q Do you have knowledge as to whether or not this is all the correspondence that transpired between me and Mr. Pappas during the period of July 13 to July 23rd, inclusive?

A I have no personal knowledge.

Q Did he ever show you anything in writing that he had requested a hearing of this Board?

A He did show me something in writing requesting—

Q After the 23rd?

A Yes.

Q But nothing before?

A Not in writing.

Q But you said he told you something orally before the 23rd?

A Yes.

Q What did he say that he said orally to whom and when?

A Well, I was in Mr. Pappas' office between that period of time, between July 14th and July 23rd. I don't know the date that it was. Apparently you had made a phone call to him, or he had made a phone call to you, I don't know which, but I happened to come in at the time that the two of you were on the line and there was talk back and forth, and one of the things I heard Mr. Pappas say is that, "He is entitled to a hearing. He wants a hearing if this cannot be negotiated."

Q But still he told you not to go to the Board meeting of the 23rd?

A Yes.

THE COURT: By the time you overheard that phone call, had the meeting of the 23rd been set?

A No, sir.

BY MISTER SCARIANO:

Q Now, did you or Mr. Pappas ever make a formal written demand for charges or reasons or a hearing prior to the 23rd?

A I can only speak for myself, and the answer is no, I did not.

Q You have not ever seen a written demand for a hearing or for charges or for reasons prior to the 23rd?

A Right.

MR. PAPPAS: Why don't we put it on tape and ask it six more times, Judge?

THE COURT: Yes, the objection is sustained.

MR. SCARIANO: If it is not important to Mr. Pappas, it is important for this Board.

MR. PAPPAS: What kind of answer is that?

THE COURT: Well, in view of the fact that you don't understand it and I don't understand it, let's pay no attention to it.

BY MR. SCARIANO:

Q Doctor, I show you what has been marked as Plaintiff's Exhibit 7. Do you know when it was sent to the Board?

A On or about August 3rd, 1970.

Q The first formal written demand that you know anything about, isn't it?

A Yes.

Q I am handing you Plaintiff's Exhibit 36 for identification, the letter you wrote to Mrs. Mellecker on June 22nd, obviously written after the June 20th meeting at Mr. Kloss' house. Now, you respond to her with respect to non-college affairs, outside activities, isn't that right?

A Yes.

Q And you respond with respect to availability in community affairs?

A Yes.

Q Yes, and you responded with respect to the Perkins and Will Dental facility?

A Yes.

Q And the computer program in Chicago Heights?

A Yes.

Q Why didn't you address yourself in that letter to the question of the deletion of the phrase "to devote full time to said employment"?

A Because I had anticipated that this was an issue or a question that had been raised which was of more interest to the total Board, and I was saving that for June 29th in which we had agreed to meet, and I would have responded to that particular question at that particular time, had that meeting ever occurred.

Q You didn't respond to the Ethnic Studies Program problem in that letter?

A For the same reason.

Q I believe you said you were informed on July 11th of the meeting in my office on July 13th?

A Yes.

Q Were you apprised in any way of what the meeting was about?

A No.

Q Did you ever withdraw that memo of May 25, 1970, in any way?

A I don't understand the question of "withdrawal," what's your definition of "withdrawal?"

Q There was never any more action taken on it at the president's cabinet, or council, as you call it?

A No more discussion was taken on it after the public statement of Mrs. Hill on June 18th, 1970.

Q The Board was not going to make any change?

A That is right.

Q The matter was dropped then with the cabinet?

A Yes.

Q Inasmuch as you knew that the meeting of the 23rd was going to be held that night, either that same day or the day before, why did you not communicate to the college that you were not going to attend that meeting?

A Because I was represented by counsel.

Q And that is the only reason why you didn't tell them that you weren't going?

A No, it was not the only reason.

Q You did not tell the college that you would not attend that meeting?

A I did not personally.

THE COURT: Well, did someone on your behalf tell the college?

THE WITNESS: Yes.

THE COURT: Who was that?

THE WITNESS: That was Mr. Pappas.

MR. SCARIANO: When did he tell the college that?

A On July 23rd.

Q That was while we were at the meeting that Mr. Pappas had any conversation at all with the college, isn't that right?

A I am not at all sure that was the only time that he communicated this. I don't know if he did prior to that, but I do know that he did on July 23rd.

Q You know that he had a conversation with the college, through me, on the 23rd, is that right?

A Yes.

Q And you know that that was during the meeting of the 23rd?

A Yes.

Q And that is all you know about that?

A Yes.

Q Okay, did your attorney ever tell you that—what he told me that night on the phone when we had that conversation while I was at that meeting?

A Yes.

Q What did he say?

A He asked if—no, you called him, he did not call you.

Q That is right, Doctor.

MR. GIAMPIETRO: Are you testifying again, Mr. Scariano?

THE COURT: Let's go ahead and get down to what was said, regardless of who called who.

BY THE WITNESS: You contacted him and you informed him, according to Mr. Pappas getting back to me, to get me down there to be terminated, and he replied to you, "Go to hell!"

Q Why would we need you there, Doctor, to terminate you?

A I don't know.

MR. GIAMPIETRO: You didn't, did you? You did it without him anyway.

MR. SCARIANO: Judge, I move that be stricken.

MR. PAPPAS: Turn about is fair play, Judge.

THE COURT: I am aware of all this. I don't know why you are both repeating the evidence that I have heretofore heard. I know that they could and I know that they did.

BY MR. SCARIANO:

Q Was it your intention on the 23rd to attend the meeting of the 23rd?

A I hadn't made up my mind.

Q When did you make up your mind?

A When my counsel informed me that the Board was going to terminate me, that there was going to be no opportunity given for a hearing or charges. I had some very serious reservations about going, even if my attorney had not so advised me, because I knew of existing policies which were being violated by that meeting.

Q Despite the fact that the policies and procedures required your presence at meetings?

A There was one exception.

Q You are talking about the contract?

A No.

Q Which exception are you talking about?

A I am talking about board policy 2.30 (4).

Q Which is that, Doctor?

A It states that the president is to attend all board meetings except when his own contract or employment is under consideration.

Q All right, did your counsel ever tell you whether or not he and I discussed any of the charges, complaints or concerns of the Board during the period of time he and I were talking about this matter before the 23rd?

A He stated—only in general terms—that the Board and yourself as a representative were not concerned with any charges, it was simply that I either had to submit a resignation or be terminated, and that was the only purpose of the discussion.

MR. SCARIANO: Judge, I am asking now that Dr. Hostrop produce all written demands for a hearing, for charges. I have served them with a notice to produce and I think that this is the time to produce them.

MR. GIAMPIETRO: I thought the man testified yesterday already, and perhaps I don't hear too well, that Plaintiff's Exhibit 7 is the only one that he is aware of. Now, I don't understand what else Mr. Scariano wants, and Mr. Scariano knows full well that this is the only one, and he has been given everything he has asked for, and I personally resent the implication that he is making that we have not produced what he has asked us to produce.

THE COURT: Well, I mean, the evidence supports you, counsel, that he says this is all he is aware of.

MR. SCARIANO: Your Honor, I will try very hard to finish with this witness before we take the lunch break, however, I beg your indulgence, because I took a lot of notes while he was testifying, and I want to go through and make sure that I don't cover any of the material that I—

THE COURT: I did not anticipate that you would be through with him before Christmas, so this is good news.

BY MR. SCARIANO:

Q Now, at the meeting of April 2, 1970, you testified that nothing was said about your job performance, isn't that right?

A Nothing was said to me about my job performance.

Q Now, when you talk about the Storefront Academy being financed 20 percent by a local agency and 80 percent by the Federal government, you don't mean that the college does not get any of that money itself to distribute, do you?

A I don't know.

Q Isn't it true that the Federal money comes to the college from the Federal Government in connection with this project?

A Yes.

Q And then the college disburses it?

A Yes.

Q And the Board approves the disbursel, right?

A Yes, they would have to approve the expenditure of funds.

Q Now, Mr. Alden Jones, the architect, he was picked before the Perkins & Will matter was resolved, isn't that right?

A I don't believe so, but I cannot testify with certainty on that.

Q Mr. Kloss got the impression that Perkins & Will didn't want the job because it was too small for Perkins & Will, isn't that right?

A Yes.

Q Okay, and he went to Perkins & Will to try to straighten it out, isn't that right?

A No.

Q All right, but there is this flap going on over Perkins & Will and the Board, right?

A Yes.

Q But before it was resolved, before the matter is finally determined, Mr. Jones is hired, isn't that right?

A I cannot testify with certainty on that.

Q Now, we are talking about this information that was being requested of you, for instance, the audit or cash flow, budget, and you testified that Brian Knight is the dean for business affairs, is that right?

A To the question of being dean of student affairs, to that alone, I will answer yes.

Q Yes, and the budget, you said comes under him?

A Yes.

Q But Dean Knight comes under you?

A For the budget—no, he did not. He reported directly to the Vice-President of Educational Services.

Q Who comes under you?

A Yes.

Q You are the general, is that right?

A No, I am the president of the college.

Q All right, but you are the equivalent—well, the statute calls you the chief administrative officer, isn't that right?

A Yes.

Q So all of these people came under you?

A Yes.

Q The vice-president and Dean Knight?

A Yes.

Q And you are directly responsible to the Board?

A Yes.

Q And the administration is responsible to you in the chain of command?

A Yes.

Q Okay, So now you are telling us that the budget is not your responsibility?

A I never said that.

Q All right, then, the budget is your responsibility?

A Yes, ultimately the chief executive officer is responsible for everything that goes right and everything that goes wrong in the institution.

Q Right, and the budget does begin, as you testified, at the administrative level?

A Yes, in the very preliminary steps, yes.

Q Right, and then ultimately reaches you?

A Then it goes down and flows back upward.

Q It goes to you and then to the Board, ultimately?

A Ultimately.

Q So you are the guy the Board has in front of them when it comes to, "Where is the budget?" Isn't that right?

A From a technical sense that certainly is true, but from a pragmatic sense the Dean of Business Services, Mister Knight, attended every Board meeting, he sat at the Board table, when the Board had any questions with respect to the budget, they directed their questions directly to him rather than to myself.

Q But he is responsible to you?

A Yes, through the Vice-President of Educational Services.

Q Right. Now the period of the strike in 1970 was from June 15 to June 19, wasn't it?

A I don't believe so.

Q How many days did it last?

A To the best of my recollection I believe that it continued for about three weeks into June and it still wasn't settled, but I believe the faculty agreed to start summer school without a new contract.

Q What is the last check you got from the college?

A I had a check waiting for me when I returned from vacation, dated July 30th, 1970.

THE COURT: Do you know what that was for?

THE WITNESS: Yes, it was for the payment on my contract for the period July 16 through July 23, 1970.

THE COURT: This is the only check you got for that period?

THE WITNESS: Yes, sir.

THE COURT: Was it the correct amount for that period?

THE WITNESS: Yes sir, except that no annual leave was paid for.

THE COURT: I am aware of that.

BY MR. SCARIANO:

Q But you are aware that the college attempted to get a breakdown of your other claims through your attorney, isn't that right?

A No, I can't say that.

Q You are not aware of that?

A No.

Q Do you know if your attorney ever sent the college any breakdown of any claim?

A I have no knowledge.

Q Okay, now, is UCLA the only placement service through which you work?

A Yes.

Q All right, what efforts do you make on your own behalf individually seeking employment?

A Well, in addition to that, I follow the Chronicle of Higher Education, which is a weekly periodical, in which various announcements of position openings are advertised and I have made a number of applications through that medium.

Q That is the only in individual effort that you have made?

A I made a direct effort for employment at Governors State University, too.

Q Doctor, if you really wanted to respond to the concerns of the Board, why did you not attend the meeting of July 23rd?

MR. GIAMPIETRO: I object your Honor. This has already been said on three occasions.

THE COURT: The objection is sustained. He said he failed to attend because of advice of counsel.

MR. SCARIANO: I think that is all I have of Doctor Hostrop.

THE COURT: Any redirect?

MR. GIAMPIETRO: Yes, your Honor.

## REDIRECT EXAMINATION

BY MR. GIAMPIETRO:

Q Doctor Hostrop, Mr. Scariano showed you Defendants' Exhibit 13, which is a letter dated the 24th of July, is that correct?

A Yes

Q Would you tell us why that letter was never given to the Board?

A Because a satisfactory settlement could not be reached between the respective attorneys.

Q And that was to be given to the Board only if a satisfactory settlement had been reached?

A That is correct.

Q Now, through your attorney you did attempt to reach a settlement in this matter, is that correct?

A Yes.

Q And what was the last thing you heard from your attorney regarding the progress of the settlement negotiations prior to July 23, 1970?

MR. SCARIANO: Objected to as hearsay, Judge.

THE COURT: Overruled.

BY THE WITNESS: That a satisfactory settlement could not be reached.

Q Now, insofar as you knew, what was the reason for the meeting which was held on July 23rd by the Board of District 515?

A To terminate me.

Q All right, did you ever tell Mrs. Pommer or anyone that you wanted the Board to terminate you?

A No.

Q Or that you would agree to have the Board terminate you under any circumstances?

A No.

Q Mr. Scariano asked you whether the Board passed upon certain matters; now, did the Board pass upon all matters?

A No.

Q What matters did it not pass upon?

A Administrative matters, the day-to-day operation of the college.

Q You indicated, when Mr. Scariano asked you, that there was not a demand for the Ethnic Studies Program or the Black Studies Program on the campus of Prairie State College, is that correct?

A There was not a demand on the campus itself.

Q Now, was there a demand from some other area?

A Yes.

Q And where was that from?

A It came from certain segments of the community, and some individuals apparently outside the college district as well.

Q Now, I believe you said that you were in favor of the Ethnic Studies Program, is that correct?

A Yes.

Q Did you have any reservations about the Ethnic Studies Program as it was constituted at that time?

A Yes.

Q And what were those reservations?

A It was developed under very unfavorable conditions. It was under high pressure conditions. It was done precipitously. It was done with a very short period of study, shorter than any other program at the college. It was developed over a period of approximately three to six months, when normally when you have a new program, you bring in a director for an entire year in advance of preparations, and it is usually implemented the following year, so it was at least twice as fast in the implementation than was historically true.

Q Now, was there a large enrollment in the Black Studies Program at Prairie State College?

A There were approximately fifty students who were enrolled out of a student body of approximations twenty-five hundred.

Q And were there more black or white students enrolled in the Black Studies Program, if you know?

A I believe white students.

Q Now, what was the purpose for which the president's cabinet was discussing the Ethnic Studies Program in about May of 1970?

A To improve the program.

Q And were any recommendations made as a result of the meeting of May 25 of the cabinet regarding that?

A No firm ones.

Q How did the meeting terminate in regard to the Black Studies Program?

A Continuing study with some of the administrators, especially in Instructional Services meeting with department chairmen, getting input there, with my meeting with the director of the Ethnic Studies Program to have his input and his ideas.

It was an evolutionary process.

Q Now, you mentioned, that you did not think prior to the time you wrote the memo of May 25th, that it would be controversial, is that right?

A Yes.

Q And why didn't you think it would be controversial?

A Because it was only addressed to members of the cabinet and marked "Confidential" and so said in the meeting of May 26th in which it was discussed.

Q Did you believe that if the suggested changes in the Black Studies Program were made that it would have any effect upon the Black Studies Program itself?

A Yes.

Q And what effect did you believe those changes would have had?

A A positive effect.

Q All right, did you believe that the changes that were proposed would in any way emasculate that program?

A On the contrary.

Q What do you mean by "on the contrary"?

A Well, the director of the Ethnic Studies Program, instead of working within one small program itself, would remain as director of the program, but help department chairmen in all departments of the college to make all courses more relevant to the needs and aspirations of our minority people.

Q Well, would it have any effect upon the students enrolled in the program?

A None that I can think of.

Q Now, in regards to the minutes of the Board meetings, who kept the minutes?

A It was kept by the Board recorder.

Q And who was the Board recorder during the period of time that you were at Prairie State College?

A For most of the period of time it was Mrs. Meredith Pommer.

Q Do you know how she happened to be employed by Prairie State College?

A Yes.

Q Would you tell us that?

A She came for an interview, and because I had a secretarial position open, I employed her as my secretary.

Q How did she come to be—or to obtain the position of Board recorder?

A I recommended her to the Board.

Q Was that a separate position from her position as your secretary?

A Yes.

Q Was there additional compensation paid to her for that other job in addition to what she was paid as your secretary?

A Yes.

Q Now, do the minutes of the Board meetings, whether they are regular Board meetings or executive sessions, or whatever, contain everything that went on at those meetings?

A No.

Q Who was it that decided what would be put into those minutes?

A In large measure it would be Mrs. Pommer who took the minutes, however, at times she was given some direction by the Board chairman if something was to be particularly emphasized in there.

Q Now, in regard to the change that was made in the contract which was signed in April of 1970 regarding the deletion of that one phrase, do you recall how that change came to be made by you?

A Yes.

Q When did that change occur?

A It was the Thursday preceding the Thursday Board meeting.

Q All right, can you tell us how the change happened to come about?

A Yes. I asked my secretary, Mrs. Pommer, to make copies of the contract form that had been in existence at the time, to be placed in Board members' folder. About five or ten minutes passed, giving her the opportunity to pull out the contract form itself, and she made a decision, apparently, rather than to proceed ahead and reproduce that particular form, to bring it into my office, and she handed it to me and she asked, "Do you want to make any changes in the form?" And I took it and looked at it, and I sat down with it and said, "Well, I will read this and I will let you know."

I read it through, and as a result of reading it through, I noticed the words, "and will devote full time to said employment." Frankly, I had forgotten—I didn't even remember what the language was of the contract. I hadn't looked at it for over a year, and then not too much.

At any rate, the Townsend matter was still pretty fresh in my mind, and I recognized that the words "and will devote full time to said employment" were really very superfluous as a result of what Attorney Franke had said in that Board meeting, and I was also very much aware of Board policy 2.140 which I came under, along with other professional staff, which clearly defined what "full time employment" meant. That was really it, so I put a period before that phrase and took it out to Mrs. Pommer and asked her to type up the contract form with the period at that point rather than adding the superfluous words.

Q All right, did the Board ever indicate to you, on April 2, a desire to discuss with you your performance of your duties?

A No.

Q Going back to the Ethnic Studies Program, did you ever tell the Board that you planned to make changes in the Ethnic Studies Program that were set forth in the May 25th memo?

A No.

Q Dr. Hostrop, you did disclose to the news media the reasons given you from the Board as to why they terminated your contract, is that right?

A Yes.

Q Why did you release those reasons as given to you by the Board for your termination to the newspaper?

A When I returned from my vacation trip from California, I read in the Star that two reasons had already apparently been released to the media by Mr. Pappas and Mr. Kloss. Secondly, I received word from Mr. Burley Grimes, who is the president of the Richard D. Irwin Company, that Mrs. Doris Hill had informed him what the reasons were for my dismissal. Third, my wife was receiving obscene phone calls.

MR. SCARIANO: I object to that Judge. That is hearsay evidence, clearly hearsay.

THE COURT: These may be his reasons, and it is his state of mind that is involved. It doesn't prove that she received them. These are what he says are his reasons.

MR. SCARIANO: Yes, but he is characterizing them as obscene, Judge. How does he know? She told him. That is hearsay.

THE COURT: No, he believes from what she told him that they were obscene phone calls.

MR. SCARIANO: It still is a conclusion.

THE COURT: Maybe they were just reciting the baseball score for the day, but that is what he was told.

THE WITNESS: I am using "obscene" in a particular sense, and I will be more specific than that. My wife received phone calls that accused me of adultery, accused me of homosexuality—

MR. SCARIANO: Objection, Judge.

THE COURT: The fact that she received them and he was informed of it merely shows his state of mind for doing what he—you are asking him he did. The objection is overruled. It does not prove that she got them or that they said those things.

BY THE WITNESS:

A (Continuing)—accused me of absconding with funds, accused me of being too generous with black student demands, accused me of not being generous enough to black students demands. The compilation of a partial release of charges, what had been getting back from my publisher and the kinds of phone calls that my wife was being subjected to left me with no other alternative, in my judgement, than to release the whole list of charges, because what I was being accused of was far worse than what the actual charges were.

BY MR. GIAMPIETRO:

Q At one time, Doctor Hostrop, I think it was the memo that you sent to the Board before the April 16th board meeting, you set out certain outside activities that you told the Board you were involved in, is that right?

A Yes.

Q Now, at that Board meeting on April 16, did anybody on the Board say anything in regard to those activities that you set out in that memorandum?

A No.

Q After April 2, 1970, when the new contract was signed, did you spend any less time at the college in pursuance of your duties than you had prior to that time?

A No

Q Now, Mr. Scariano showed you two articles which you wrote, which were marked Defendants' Exhibits 28 and 29; you did write the articles that appear in those magazines, is that correct?

A Yes.

Q Do you recall when you wrote those articles?

A The one on "Simulations" which appeared in "College and University Teaching," was written in 1966.

Q And when was it submitted to the publisher?

A In 1966 or early 1967; it was an article about a United States History simulation experience that I had personally used at College of the Desert, in California, and I was describing the success with the teaching technique at that particular college.

Q All right, now, between the time that you submitted that article and the time that it appeared in the autumn of the 1972 issue of that magazine, did you have any contact of any kind with that magazine or anyone on behalf of that magazine?

A No, I didn't even know if it had been accepted for publication.

Q And when was the first time that you learned that the article had been published?

A When I received a copy in the mail, about four years later.

Q All right. Now in regard to the article that appears in Defendants' Exhibit 29, the magazine "Educational Technology," when did you write that article?

A The fall of '68 or early '69, around that time.

Q And when was it submitted?

A At the time it was written. It was about two years later before it saw print. It is only about a half a page in length.

Q And did you have any contact with the publication between the time that you submitted it and the time that it appeared in print?

A No.

Q Now, you were asked about some hearings before the Board that were given to Mr. Savage and Mr. Townsend, is that correct?

A Yes.

Q Had the Board taken any position in regard to the matter in dispute involving Mr. Savage and Mr. Townsend?

A Not to the best of my knowledge.

Q Now, there was a delay in the preparation and presentation of the budget for the 1970-1971 school year, is that right?

A Yes.

Q What was the reason for the delay in the preparation of that budget?

A Well, the chief reason was the fact that we had a very strong unionized faculty and there were very long and protracted negotiations which involved four key administrators, one of whom was the Dean of Business Services.

Q What was his name?

A Brian Knight—he would devote approximately ten to twenty hours a week in the negotiating process which began about February of 1970 and continued on through August of 1970.

Q Now, in addition to being Dean of Business Services, did Mr. Knight hold another position at Prairie State?

A Yes, he also was the treasurer.

Q As treasurer, to whom did he report?

A Directly to the Board.

Q Did he attend Board meetings?

A Every one.

Q Was your employment with Prairie State College considered each year by the Board?

A Yes.

Q Was it always the same time of the year by the Board?

A Yes.

Q And when was that?

A Without exception it was the Board meeting preceding the sitting of the newly-elected trustees.

Q Now, Mr. Scariano asked you if you were upset when you learned that some of the Board members had directly contacted Mr. Cooke regarding the Ethnic Studies Program, and you said you were upset, is that correct?

A Yes.

Q Why were you upset about that?

A Because it was a clear violation of Policy Number 2.00 which states that Board members are not to directly approach members of the staff without the president of the college being present.

Q Now, in addition to the hours that you spent at the college between nine and five, what are termed normal working hours, did you spend any other time at Prairie State College working on behalf of that college?

A Yes.

Q And what other hours did you spend working on behalf of the college?

A They are best enumerated in Defendants[' Exhibit dated July 24, 1970.

Q As a result, Dr. Hostrop, of the various applications which you sent for employment, did you ever obtain any interviews?

A Yes.

Q How many?

A Three.

Q And with what institutions?

A The first was Governors State University in South Park Forest, Illinois.

Q When was that?

A Sometime between the 14th of July and the 23rd of July, 1970.

Q And what was the position for which you were interviewing with that school?

A Director of Instructional Development.

Q And did you obtain that position?

A I was told by the—

MR. SCARIANO: I object to what he was told…he wants to testify as to what was said in that interview and I object most strenuously. I can't think of anything more classically hearsay.

THE COURT: The objection is sustained.

BY MR. GIAMPIETRO:

Q Did you obtain that position?

A No.

Q Well, were you offered the position?

A Yes.

Q Were there any conditions on the offer that was given to you regarding that position?

MR. SCARIANO: Objection, Judge, this is hearsay also as to whether or not there were any conditions to the offer. We don't have anybody here from Governors State to cross examine on this. Now, they could bring people in from Governors State. It is right next door, and I object, traditionally hearsay.

THE COURT: Your response to that is what?

MR. GIAMPIETRO: Your Honor, this goes to indicate what Doctor Hostrop's state of mind was between the 13th and the 23rd of July.

THE COURT: The objection is overruled.

BY MR. GIAMPIETRO:

A What were the conditions?

A The conditions were if I submitted a resignation to Prairie State College, I would be employed. If I did not submit a resignation and the Board terminated me, I would not be employed.

Q All right, and what were the other schools that you obtained interviews with?

THE COURT: Who was the one who told you that?

THE WITNESS: Dr. Engrebetson, president of Governors State University.

THE COURT: All right.

BY MR. GIAMPIETRO:

Q What were the other schools you had interviews with?

A Leeward Community College in Hawaii, and Santa Monica City College in California.

Q Did you obtain or receive offers of employment from either of those schools?

A No.

Q Now, who connected with Prairie State College compiled and tied together the policies and procedures of the Board?

A The Board.

Q Are there Board policies, Doctor, that deal with writing, speaking engagements and things of that type on the part of employees of Prairie State College?

A There are two such policies.

Q All right, do you recall offhand what they were?

A Yes.

Q What the numbers are?

A Yes, 4.00 is the academic freedom policy which states that—

MR. SCARIANO: I object to what it states.

BY MR. GIAMPIETRO:

Don't tell us what they state, just tell us which ones they are.

A 4.00 and the other one is 4.140, particularly (6).

Q Dr. Hostrop, you indicated that you had written out on long hand two memos that Mr. Scariano showed to you, is that correct?

A Yes.

Q I will show you what has been marked Defendants' Exhibit 13 for identification; when was the last time you saw that document prior to the time that Mr. Scariano showed it to you here in the courtroom?

A July 23, 1970.

Q And where was it that you last saw it?

A It was left with my secretary, Mrs. Pommer.

Q For what purpose?

A She typed this up for me in case I should decide to submit my resignation.

Q All right, did you discuss with her anything regarding the release of that information to anyone?

A Well, yes, because it was marked "Confidential."

Q What did you tell her?

A I told her to please type it up, and that if I decided to resign, I would use it.

Q Did you ever authorize her to release that information to anyone at any time?

A No, I didn't release it, so I certainly wouldn't have authorized her to do so.

Q Dr. Hostrop, I will show you what has been marked for identification as Plaintiff's Exhibit 54, which is, on the top, marked "4.140 Personnel policies regarding academic staff," are those one of the policies that you referred to regarding procedures involving speaking and writing and use of employee's time?

A Yes.

Q All right, and I will show you what has been marked for identification as Plaintiff's Exhibit 55, headed, "4.00, Academic Freedom." Is that the policy that you have also referred to regarding speaking and writing and things of that nature?

A It is.

Q Dr. Hostrop, I will show you what has been marked for identification as Plaintiff's Exhibit 56 and ask you if you can tell us what that is?

A Yes, these are part of the policies and procedures of Prairie State College.

Q Were those policies and procedures in effect at Prairie State at the time that you were employed?

A Yes.

MR. GIAMPIETRO: I have no further questions, your Honor.

THE COURT: All right, Mr. Scariano, limited to the redirect now.

MR. SCARIANO: Yes sir.

RECROSS EXAMINATION

BY MR. SCARIANO:

Q Doctor, you say that the minutes of the Board don't contain everything. Now, what you mean by that is that it doesn't have verbatim, word for word, what is said at a meeting, isn't that right?

A Yes

Q All right, but they are minutes in the sense that the action taken might be recorded, isn't that right?

A Yes.

Q And part of statements or conversations?

A Yes.

Q Okay, I read from Defendants' Exhibit 38, which states, Pappas and Kloss, however named two reasons which they say do not exceed in weight the other allegations. One of these was the presidents' handling of a controversy with Benjamin Cooke, director of the College's Ethnic Culture Center over the conduct of the program and the other was Doctor Hostrop's plan to engage in substantial book writing commitments, which the Board felt might conflict with his full-time attention to college administrative duties."

That is what you were referring to?

A Yes.

Q None of those is a direct quote of either man, is that right?

A No.

Q Doctor, did I understand you to say that there was no demand from the campus or the college community for the Ethnic Studies Program?

A Very little.

Q Defendants' Exhibit 15 for identification, take a look, please....That accompanied the application that you signed that went to the Illinois Junior College Board for approval of this program, isn't that right?

A Yes.

Q And it states, "Faculty members, students and community people alike have urged the inclusion of an Afro-American Studies Program in the college curricula. The Department of Social Science accepted the responsibility of responding to these interests and has developed, in cooperation with students, faculty persons and other departments and interested members of the community a proposal for the establishment of an Afro-American Studies Program."

Isn't that right?

A Yes.

Q Doesn't Prairie State serve the community?

A It has the legal responsibilities for those within Junior College District 515.

Q Right, and you said that the demand came from certain segments within the college community, isn't that right?

A No, what I said is that at least half were people who were brought in to a very turbulent Board meeting, who were not residents of Illinois Junior College District 515.

Q Are you telling me that the program should not have been initiated, Doctor?

A No.

Q You did sign your name to the application?

A Yes.

Q And you wanted this program for Prairie State?

A Yes.

Q And the demand came from people on campus and off campus, isn't that right?

A Ninety percent of the demand, at least, came from off campus.

Q But within the district served by 515, Prairie State College?

A No.

Q So you are telling me that you put into effect a program that did not serve the people of 515?

A That is not what I said.

Q What are you saying?

A I am saying that this program was born under fire, that at least half of the people that were in attendance that night were not residents of District 515; most were from nearby Harvey. That is all I am saying. The program was badly needed, no argument on that.

Q You say some people came in from the Harvey area and asked that this program be instituted at Prairie State?

A Yes, at least fifty percent were from there.

Q But yet your testimony is also that it took three to six months to put this program together, isn't that right?

A Yes, once the decision was made, it took from three to six months to get to that point.

Q That one meeting with the Harvey people did not decide whether or not this program was going to be asked for by the college Board, is that right?

A It decided when it was going to be implemented.

Q And you thought it was precipitous?

A Yes.

Q Because of one meeting?

A Yes. The Board of Trustees thought so, too.

Q It is their decision, though, to go ahead?

A Yes.

Q And you signed it?

A Yes.

Q Okay. Now, you say you employed Mrs. Pommer as your secretary?

A Yes.

Q She is paid by the college, isn't that right?

A Yes.

Q She was a college employee?

A Yes.

Q She was Board recorder?

A Yes.

Q In that connection she was a college employee, too?

A Yes.

Q She was not your private secretary, is that right?

A No.

Q You left those documents at the college, did you not? Defendants' Exhibits 13 and 18, to which you referred, you left them there, isn't that right?

A I presumed, Mr. Scariano, they would have been torn up and deposited in a wastepaper basket by Mrs. Pommer as soon as she knew I was not going to submit them to the Board.

Q Did you tell her to do that?

A No, I didn't think I had to.

Q Mrs. Pommer saved everything, didn't she?

A I learned about it in the courtroom for the first time.

Q You did not consider those documents personal, did you?

A Yes.

Q Why are you using a public employee then?

A Because they were directly connected with possible college business.

Q And they are not personal or private anymore, are they?

A I think they are personal until such time as a release is authorized.

Q Then you shouldn't be using a person on a public payroll to do personal work, isn't that right?

A Mr. Scariano, there was a good chance that those letters would have been submitted to the Board of Trustees. There was at least a fifty-fifty chance that they would have.

Q It concerned college business, did it not?

A Yes.

Q All right, and you gave it to a college person to do?

A Yes.

Q Now, you went to Governors State University and you said that Dr. Engrebetson told you that if you resigned he would give you a job but if you didn't resign he would not or could not give you a job?

A He said he would not.

Q All right, did he give you the impression that he was procuring a resignation for Prairie State?

A He never represented himself as being a representative of Prairie State.

Q And neither are you insinuating that Prairie State got Dr. Engrebretson to do anything of the kind, are you?

A No.

Q All right. Now you say that when you gave Exhibit 13 to Mrs. Pommer, you say the last time you saw it was July 23rd, when you asked her to type it. You said. "Please type it. If I resign, I will use it." Is that right?

A Yes.

Q All right, you also told her that if you went to the meeting on July 23rd it would be to resign, isn't that right?

A I don't believe I ever told her any such thing.

Q Nothing about the meeting of July 23rd?

A I don't believe so. At least I cannot recall any such thing.

Q And you also told her, according to your testimony, that Exhibit 18 would be used if you resigned.

A Again, I have to say, Mr. Scariano, I don't recall ever telling Mrs. Pommer anything with respect to what I was going to do or not going to do. I had not made up my own mind.

Q Now, you say you never authorized the release of these documents?

A That is true.

Q You never told her not to release them, did you?

A No, I never told her that.

Q You were shown Plaintiff's Exhibit 56 for identification titled "Faculty Handbook," is that right?

A Yes.

Q And it is dated January 1, 1968?

A Yes.

Q Prairie State College, Chicago Heights, Illinois?

A Yes.

Q Weren't these superseded by the policies and procedures in this loose-leaf book?

A Only those in which specific Board action was taken in accordance with Board policy 1.85.

Q And weren't these superseded by the collective bargaining agreement with the Teachers Union?

A Some may have been and some might not. Some may still be in existence today.

Q So we don't know what in here is in conflict with policies and procedures with the Teachers Union?

A I wouldn't know.

MR. SCARIANO: Thank you, Judge.
MR. GIAMPIETRO: I have no further questions, Judge.
THE COURT: All right, you rest?

(The witness was excused)

Following are testimony highlights of several Board members as shown in cross and redirect examinations.

CROSS EXAMINATION

BY MR. GIAMPIETRO:

Q Mrs. Mellecker, did Dr. Hostrop do anything right while he was president of Prairie State?

MR. SCARIANO: Objection, Judge.
THE COURT: Overruled.

BY THE WITNESS:

A Yes, I believe the executive session minutes of the April 2nd meeting refers to a comment I made.

Q As a matter of fact, at the April 2nd meeting the Board members there present decided that the good points outweighed the bad points, whatever they may have been, right?

A Yes.

Q Now, after April 2nd, did Doctor Hostrop spend less time carrying out his functions as president of Prairie State College than he had before?

A Before April 2nd or after April 2nd, I was not on campus to make that evaluation.

Q All right, now, on the meeting or at the workshop session on the 20th of June, was there any discussion with Dr. Hostrop about terminating his contract?

A None.

Q When was the first time, to your knowledge, that Dr. Hostrop was ever told anything about terminating his contract?

A It must have been July 13, the meeting in Scariano's office, with Mister Kloss.

Q Now, in reading through your notes regarding your concern about the budget and fiscal affairs in general, I noted that most of the answers were given regarding these questions by Mr. Knight, is that correct?

A He was an administrative officer and business manager of the college who had the most knowledge about them.

Q He was also the treasurer of the Board, wasn't he?

A That is purely a legal office with no attendant responsibility?

Q Wasn't he at every Board meeting?

A Yes, he was, but other administrative officers were, too.

Q But he had certain duties under the policies and procedures as the treasurer, isn't that correct?

A I am not familiar with those.

Q You wouldn't dispute the fact that as treasurer he had certain duties that he was to perform as set out in the policies and procedures of the Board?

A I can't dispute it without looking at the record.

Q Did you fire Mr. Knight while you were a member?

A I would have liked to.

Q But the Board didn't?

A Concerns were expressed to the president about his performance.

Q Did the Board members have the right to place matters on the agenda of upcoming Board meetings?

A They must have, because they did.

Q And you yourself did it?

A Yes.

Q And what procedure would you follow in placing a matter on the agenda, seeing that it got put there?

A I did it in one of two ways, either by a memo to the Board or the president or by requesting items from the Board on the agenda that a motion or a matter be placed on the next agenda.

Q And invariably those things that you requested be placed on the agenda were in fact placed on the agenda, were they not?

A. That is true.

Q Now, you said that it was your feeling that Dr. Hostrop was trying to squelch the Board and trying to keep the Board members from being heard on things that were concerning them, is that right?

A Yes, that is right.

Q And one of the things that you felt indicated that was his attempt, you said, to delete from the agenda a subject called "Items from the Board," is that right?

A That is right.

Q Do you recall what else Dr. Hostrop said regarding the deletion of items from the Board other than just saying, "I think this ought to be not part of the agenda any more." Was that all he said?

A As I recall, it was Dr. Hostrop's concern that the items from the Board brought up matters that were best discussed in private and that it reflected on the college and that he wanted it handled in a quiet, unobtrusive, unpublic way.

Q You indicated in your direct examination that this was brought up in the memo of June 29, 1970, isn't that right?

A I believe so.

Q And that is the memo, as you recall, where he said things ought to be handled quietly instead of being brought up before the Board in open session.

A As I recall, yes.

Q Now, I show you what has been marked as Plaintiff's Exhibit 19 in evidence and call your attention to the last page of that, Item 8, and ask you if that is the section to which you referred.

A I believe so.

Q And that is the memo, as you recall, where he said things ought to be handled quietly instead of being brought up before the Board in open session?

A As I recall, yes.

Q Now, I show you what has been marked as Plaintiff's Exhibit 19 in evidence and call your attention to the last page of that, Item 8, and ask you if that is the section to which you referred?

A Yes, it is.

Q Does he say anything in there about keeping things quiet and not bringing them out in Board meetings?

A No, not in this memo. It is not in this one.

Q As a matter of fact, that memo says, does it not, that instead of having a shotgun type of item on the agenda called "Items from the Board," that if any member has something that they would like to ring up, they ought to put it on the agenda in advance so that everybody will know about it before it comes up at a Board meeting and everybody will be able to be prepared to discuss it when it comes up. Isn't that what that memo says?

A That is what it says to you.

Q Well, isn't that what the words there say?

MR. SCARIANO: I am not going to have her—

THE COURT: She says that is says that.

BY MR. GIAMPIETRO:

Q Did you feel it was improper for Dr. Hostrop to propose changes in the format of the meetings?

A No.

Q You said sometime between June 20th and about the 8th of July that you decided in your own mind that some steps would have to be taken to relieve Dr. Hostrop of his duties as president of Prairie State College, is that correct?

A That is correct.

Q Did you ever tell that to Dr. Hostrop yourself?

A No, I did not.

Q Now, you said that at the meeting of June 29th concerning the matter of the Ethnic Studies Program and Mr. Cooke was still a controversy, is that right?

A I believe that is what I testified.

Q And isn't it a fact that the continuing controversy was as a result of the actions of Mr. Cooke?

A The Board did not see it that way.

Q Well, wasn't—

A Totally that way.

Q Wasn't Mr. Cooke the one who kept bringing this subject up at Board meetings, even though it was not on the agenda?

A That is true.

Q And wasn't Mr. Cooke the one who kept talking about this even though he had been assured by the Board that there was going to be no changes in the Ethnic Studies Program?

A That is true.

Q And wasn't Mr. Cooke the one that kept bringing this up after Dr. Hostrop had attempted to meet personally with Mr. Cooke and Mr. Cooke refused to do so?

A That is Dr. Hostrop's testimony.

Q Well, Dr. Hostrop reported to the Board, did he not, that he had attempted to meet with Mr. Cooke and Mr. Cooke had refused to do so?

A I vaguely recall a discussion held sometime after the first of July that showed that Dr. Hostrop had not met with Mr. Cooke, that Mr. Johnson had met with Mr. Cooke.

Q And wasn't the Board later on told that Dr. Hostrop finally, had in fact, succeeded in meeting with Mr. Cooke?

A Yes, I believe the comments of July 6th indicate that he had met with Mr. Cooke.

Q Did the Board ever consider replacing Mr. Cooke?

A Not collectively as a Board.

Q Did the Board ever, at any time, ask that the April 2nd contract be amended or rescinded in any way as to Dr. Hostrop?

A No.

## REDIRECT EXAMINATION

BY MR. SCARIANO:

Q Mrs. Mellecker, having reference to Defendants' Exhibit 41 for identification, looking at paragraph (e) entitled "Budget Hearing" wherein it is stated, "As a reminder, our budget hearing is to take place on Thursday, September 25, 1969 at eight P.M. in the Board Room. I would recommend to the Board that this hearing be just that. I believe it would be a mistake for Board members or the administration to allow themselves to be drawn into a debate. I believe that the Board should simply listen to anyone who wishes to speak. That should suffice. I also think the Board may be wiser to officially adopt the budget the following day rather than to do it during the night of the budget hearing itself."

Isn't that one of the memos that you—

MR. PAPPAS: Objection, Judge.

THE COURT: The objection is sustained as not proper redirect.

MR. SCARIANO: It is, Judge.

THE COURT: Well, I just said it wasn't.

What is the next question?

MR. SCARIANO: Judge, I would like to make a record on it.

THE COURT: Make a record on it. Make an offer of proof, anything you want.

MR. SCARIANO: The offer of proof is that Mr. Giampietro read from the memo of June 29th and asked her if that was the memo she referred to with respect to the squelch policy and she referred to several memos, Judge, and this happens to be one of them.

THE COURT: You have made your record now, I assume, and the objection is still sustained.

MR. SCARIANO: That is all I have, Judge.

RECROSS EXAMINATION

BY MR. GIAMPIETRO:

Q Well, Mrs. Mellecker, those policies and procedures about going through the president did not stop Board members going to Mr. Cooke directly, did they?

A It stopped me.

Q Well, it didn't stop some of the other members, did it?

THE COURT: She is not accountable for them.

MR. GIAMPIETRO: All right.

THE COURT: Call your next witness.

MR. SCARIANO: Mrs. Hill

CROSS EXAMINATION

BY MR. GIAMPIETRO:

Q Mrs. Hill, there was no executive session on July 27, 1970, is that correct?

A No.

Q Well, there wasn't any question in anybody's mind that Mr. Johnson was going to be hired on the 27th of July, was there? That had already been decided long before, hadn't it?

A It wasn't acted on.

Q But I mean the decision had been made before, hadn't it?

A Yes.

Q And this was just a manner of making or following the form to comply with the law, to conform your actions to what the law required, isn't that right?

A It reflected—yes.

Q Do you know when the decision had been made by the Board to hire Mr. Johnson as interim president of Prairie State?

A I can only speak as an individual on my decision. There wasn't any selective action until the 27th?

Q Well, Mr. Kloss, Dr. Griffith had gone to seek Mr. Johnson out about accepting the position even before action was taken by the Board terminating Dr. Hostrop, isn't that right?

A I cannot tell you specifically when they went to see Mr. Johnson.

Q Well, it was before the meeting of the 23rd, wasn't it?

A It could have been.

Q Well, you heard Mr. Kloss testify that in the courtroom here earlier in the proceedings, didn't you?

A I'm afraid I can't remember that specific date that he gave.

Q Now, was Mr. Johnson given a written contract when he was hired as an interim president of Prairie State on or about the 27th of July?

A Not that I can recall.

Q Was he ever given a written contract as president of Prairie State at any time?

A I cannot recall.

Q Well, is there anything that you know of that requires

Mr. Johnson as president of Prairie State College to devote full time to his duties in that position?

A Well, I cannot recall the document, so therefore I cannot recall any such words.

Q Well, he is required to devote particular time under the policies and procedures of the Board, is he not?

A The same policies relate now that it did then.

Q So Mr. Johnson's time that he was or is to devote to his duties as president of Prairie State College are governed by the same policies and procedures that Dr. Hostrop was governed by as president of Prairie State College?

A That is correct.

Q What was Mr. Knight's position at Prairie State College?

A Dean of business services.

Q He was also treasurer, isn't that right?

A Yes. That is a legal position only. It does not have particular detailed duties devoted to it.

Q Doesn't the Board policies and procedures set out what the duties and responsibilities of the Treasurer are?

A Yes, I believe there are about four items listed, maybe five. I would like to see that policy.

Q Here it is. I ask you are those the policies which refer to the treasurer and his duties?

A There are four here, yes.

Q Okay, and one of the duties of the treasurer is to be responsible for keeping in proper form such records as may be required by the Board, isn't that right?

A This has to do with records as relates to levies, certificates. financial investments, this sort of data. It has nothing to do with the budget.

Q Where is it set out that the records that are referred to in this policy refer to those things that you mentioned and don't refer to anything having to do with the budget?

A I would say by absence of it. The particular thing is listed under the duties and responsibilities of the Dean of Business Services. It is coincidental they happen to be held by the same person.

Q Well, so Mister Knight was the one who was in charge of making sure that the budget got prepared and presenting it to the Board, as a result of his position in charge of that particular area?

A It was under his listed duties...the budget, as all things, be it hiring, contracts, any sort of recommendation, came to the Board from the President. The Board spoke to all other members of the staff through the president.

Q Well, no, that is not true in regard to Mr. Knight, is it? Didn't the Board speak directly to Mr. Knight when he was at the Board meetings and didn't he directly answer the questions that you asked regarding the budget and fiscal affairs?

A He was there at the invitation of the president so, therefore, of course, we spoke to him. If he had not been there, the same questions would have been asked.

Q And isn't it right that he was there not because Dr. Hostrop asked him to be there, but because he was the treasurer of the Board? [Author's note: the Treasurer position was a *paid* position].

A The treasurer of the Board, I do not believe, is required to attend all Board meetings.

Q Now, you said, I think, that at one particular meeting, you made the statement to Mr. Cooke that there was going to no change in the Ethnic Studies Program, is that correct?

A The whole statement is indicated in the minutes.

Q Okay. Didn't you also say at one time that as far as you were concerned the Black Studies Program was no more sacred than any of the other programs at the college?

A Yes, I made that statement as it related to budgetary items.

Q As a matter of fact, that was one of the real problems with the Ethnic Studies Program, was the budget of that program, isn't that right.

A I believe I related quite a history as far as funding is concerned.

Q And that was one of the concerns that was raised, was the way Mr. Cooke was spending the funds within the budget for that program, isn't that right? It was a real problem?

A I believe the concerns was the amount of money requested.

Q Right, that was—well, as well as the way he was using it?

A I related that the fees for lectures that came before the Board for their approval did not receive unanimous vote. They did, however, receive a majority vote.

Q And who brought up the matter of the Ethnic Studies Program at the June 29th meeting, in executive session?

A I cannot recall.

Q Well, isn't it true that Dr. Hostrop was the one that brought it to the Board and ask for guidance?

A If I could look at the minutes, I—

Q I show you Plaintiff's Exhibit 12-A, which are the minutes of the executive session of June 29, 1970, and call your attention to page 3. Don't those minutes indicate that it was Dr. Hostrop that brought the subject up?

A Yes.

Q You said one of your concerns was that during some period of time Dr. Hostrop couldn't or wouldn't meet with Mr. Cooke, is that right?

A I said he didn't meet face-to-face with Mr. Cooke between the period of June 12th and July 6th.

Q Okay, do you know why he did not meet with Mr. Cooke?

A He stated Mr. Cooke was not responsive to his requests to meet with him?

Q You don't know of anything that would indicate that the statement of Dr. Hostrop was not true, do you?

A I believe I stated that I wondered why this was not able to be accomplished by Dr. Hostrop when it was accomplished by at least one other member of the staff.

Q Mr. Johnson?

A That is correct.

Q You never made any inquiry as to why Mister Cooke was nonresponsive to Dr. Hostrop, did you?

A No.

Q Now, what was it that Dr. Hostrop misrepresented to the Board regarding Mr. Savage?, if anything?

A I am not sure that my words were that Dr. Hostrop had misrepresented something to the Board.

Q That is what is set out in the charges, Plaintiff's Exhibit 6, isn't it? I will call your attention to the fifth paragraph.

A I can remember at the time of this session with Mr. Savage and the Board the statement by Dr. Hostrop that Mr. Savage was very cool to the idea of reassignment. I had a different light on that statement when I heard Mr. Johnson's comment that the transfer of him was, according to him, the whole situation had been mishandled as far as this transfer was concerned.

Q That is the same Mr. Johnson that took over Dr. Hostrop's job, right, as president?

A Yes, he did become the acting president.

Q And the permanent president later on, right?

A Quite a bit later on.

Q Okay, you said, I think, that Dr. Hostrop was given broad authority to handle the Savage matter, is that right?

A That is correct.

Q And he recommended and Dr. Jones, who was Mr. Savage's immediate superior, recommended that Mr. Savage's contract not be renewed, isn't that right?

A Yes.

Q His contract was ending about this time in June or July of 1970, isn't that right?

A That is correct.

Q And the Board overturned that decision, right?

A During that—

Q Mrs. Hill, would you just please answer the question.

THE COURT: Is that true, that you overturned his decision? That is the only question.

THE WITNESS: The only way I can answer that is that Doctor Jones—

THE COURT: The only way you can answer it is yes or no or you don't know. There are three ways of answering it.

BY MR. GIAMPIETRO:

Q Well, maybe that is just too difficult of a question. Let me withdraw it.

Did the Board follow that recommendation?

A The Board did not follow that initial recommendation. The recommendation was in itself altered.

Q Okay. Now, who among the administration had to spend a great deal of time and effort on the Black Studies problem after the memo of May 25th had been printed in the newspaper?

A This would have been the person who is in charge of instructional services. This would have been the person responsible for student affairs. This would have been the person who was responsible for...directly responsible for security.

Q Who were those people? Do you know?

A Mr. Johnson was acting vice-president of instruction. Dr. Jones was vice-president of student affairs. Mr. Knight was dean of business services. under which security came.

Q All right, after this memo was made public, what did Mr. Johnson do in regard to the Black Studies problem?

A He met several times with Mr. Cooke and with Dr. Hostrop.

Q Do you know how much time this took?

A No, I would have no way of knowing this. I know that it was several times.

Q So you would have no way of knowing either whether that interfered with his carrying on of his other functions at Prairie State, would you, if you don't know how long this took?

A Well, I would—I am certain that the kind of meetings that were held were ones that were very stressful.

Q And from that you conclude that Mr. Johnson did not have time to do anything else on the other matters that were facing Prairie State, right?

A I think energy does have limits.

Q Okay, did you ever talk to Mr. Johnson about what he was doing in regard to the Black Studies problem?

A Outside of Board meetings?

Q Right.

A No.

Q What did Dr. Jones do in regard to this Black Studies problem during this same period of time?

A I believe he met with students.

Q Do you know how often? How many times?

A I would say the same sort of things as I related to Mr. Johnson.

Q Isn't it true, Mrs. Hill, that the only real problem that was faced by the Board in regard to the Black Studies problem was the constant contact with the Board by Mr. Cooke, after the first meeting where the students were there?

A I know I—I believe other members, too, had many phone calls at home, had many letters, several letters, many anonymous letters. When I would do my grocery shopping, when I did any meeting of anyone in my neighborhood or in the community, I was confronted with this. It carried out much beyond the Board meetings.

Q And this was something that was constantly being stirred up by Mr. Cooke, isn't that right, because he was afraid of what this might do to his position, isn't that right?

A At no other time was it as such a pitch as after the June 12th release of the memo.

Q That is what I am talking about, after the release of the memo it was Mr. Cooke who kept stirring things up in this regard, isn't it?

A I do not know who stirred them up, I only know the results.

Q Okay, now, in the memo of May 25th, or at any other time, was there any indication to the Board that Dr. Hostrop ever tried to change the curricula of the Black Studies Program or made any recommendations to change the curricula within the program?

A Well, there was never anything, to my knowledge, other than this discussion at the president's council. That in itself would not change anything. That is what we tried to convey to Mr. Cooke.

Q And he had a great deal of difficulty understanding, apparently for some reason or another, isn't that right?

A He was very fearful that the program that he had been hired to flesh out was going to be altered without his input. It was going to be altered by others. I don't think I ever got to the point or ever considered whether this fear was justified or not. It was real. We had to deal with the result of it. That is what we were addressing ourselves to.

Q I think you said, Mrs. Hill, that many students were complaining about Mr. Savage earlier in the year '69-70?

A Yes, in the fall, winter, before Christmas in 1969, yes.

Q And then when Mr. Savage appeared before the Board, a whole flock of students showed up to speak in his behalf?

A That is correct.

Q And those students were accompanied by Mr. Cooke, were they not, at that meeting?

A Oh, yes, and he spoke relating to the memo on Black Studies. There were probably two to three hundred people at that meeting. They were all not there regarding Mr. Savage.

Q There were many different things discussed at that meeting?

A That is right. We were at that point in a strike. We had quite a long presentation by the members of the union, Mr. Swenson from the Cooke County Teachers Union. We had many people speaking as citizens, we had many students speaking on the delay of summer school because of the strike, we had many things brought up during items from the floor.

Q Mrs. Hill, did you tell us when you became aware of the deletion of the language regarding "full time" in Dr. Hostrop's contract?

A Approximately a week after it was approved.

Q And did you ever ask Doctor Hostrop or anyone to put the language back in?

A To me it was not possible to repair that sort of an action, which I considered most serious.

Q But you don't know whether Mr. Johnson, who is president now, has a contract with that kind of language in it?

A My response is that it was not so much what words were there, it was the act of changing it. That is a serious matter, in my opinion.

THE COURT: Would you like to strike the answer because it is unresponsive and get a—

MR. GIAMPIETRO: I would, indeed, and I would like an answer to my question.

THE COURT: The motion to strike the answer is granted.

BY THE WITNESS:

A May I have the question again?

BY MR. GIAMPIETRO:

Q The question is, do you know whether Mister Johnson now has a contract containing that language, or at any time had a contract containing that language?

MR. SCARIANO: Judge, she has already testified.

THE COURT: No, she hasn't. She gave an answer which was stricken because it was unresponsive.

MR. SCARIANO: She testified before that there was no contract as far as she knew. How could there be anything deleted if she doesn't know if there is a contract? I don't understand that.

THE COURT: Let's go back to fundamentals and find out if Mr. Johnson ever got a contract.

BY MR. GIAMPIETRO:

Q Do you know?

A I do not recall.

MR. GIAMPIETRO: No further questions.
THE COURT: All right.
MR. SCARIANO: That is all for Mrs. Hill.
THE COURT: All right, put on your next witness.

## CROSS EXAMINATION OF DOCTOR GRIFFITH

BY MR. GIAMPIETRO:

Q Doctor Griffith, did you tell Mr. Cooke that the administration had made no recommendation for change to the Board in the Ethnic Studies Program?

A I may well have, because as far as I was concerned the administration had made no recommendation to us at that time and had not made it after the meeting of July 7th.

Q Such recommendation was never made?

A Not with Dr. Hostrop.

Q Were you aware of a Board policy that said that any contacts between the Board and any members of the staff ought to be joint session with all Board members present and the president as well?

A I had read all of the policies and procedures, and with the same token I felt that because there appeared to be a great deal of misunderstanding between people, it was my responsibility as an elected representative of the college to get that information which I needed to have to make a decision.

Q And what day was it that you went to see Mr. Cooke with these other gentlemen?

A I believe it was July 7th. Mr. Kloss' letter, which I think is the 11th or so, referred to the date.

Q Mr. Cooke had met with the Board prior to this time, had he not?

A He had been at the Board meetings, that is correct.

Q And the Ethnic Studies Program had been discussed with him at the Board meetings prior to this date, had it not?

A There had been some statements made. It had not really been discussed with him.

Q But you thought it better, instead of talking to him about these things when everybody was present, to go off with a couple of other people and meet with him at some other time instead, right?

A I thought that I could obtain a broader base of information on which to be able to make a judgment on my part as to what the situation was by having a discussion with him in a surrounding which was not compounded by a large number of other people who might be present.

Q You mean like the other Board members?

A No, I am talking about visitors at our meetings.

Q You talked to Mr. Cooke about these things in executive session, didn't you, with the Board? Wasn't he in executive session shortly prior to this?

A He had been present at executive sessions but certain areas were discussed but not every area of his concerns and there were other areas which needed to be discussed, and there was not time to cover all of those at a particular session. We had very, very long meetings and quite frequent.

Q And I think you said that you were one of the people who went to see Mr. Johnson prior to the time Dr. Hostrop was terminated?

A Yes, I did.

Q To talk about taking over as at least interim president of Prairie State?

A The day before we terminated Dr. Hostrop, that is correct.

Q Did you ever talk to anybody else about Dr. Hostrop's termination prior to the July 23rd Board meeting?

A Probably my wife, in fact, I am sure of it.

Q How about the editor of the newspaper?

A I had gone to visit the editor and publisher of the Homewood-Flossmoor Star and Star Tribune Publications and had talked with them about the possibility that action might be taken the following day in terms of maybe Dr. Hostrop would be resigning or that he would be terminated.

MR. GIAMPIETRO: No further questions, your Honor.

## CROSS EXAMINATION OF MISTER PORTER

BY MR. GIAMPIETRO:

Q Mr. Porter, do you know if Mr. Cooke had refused to see Dr. Hostrop when Dr. Hostrop had tried to get together with him?

A I think on several occasions that was true.

Q Did you ever ask Mr. Cooke to see Dr. Hostrop?

A No.

Q Do you know what caused the lack of communication between Mr. Cooke and Dr. Hostrop?

A Many things, I expect. I could speculate.

Q Probably things sort of like Cooke's Commandos that you mentioned, right?

A Partly, I would expect.

Q Did you ever hear anybody else say they didn't feel that Dr. Hostrop should have written that May 25th memo?

A No, I heard them say that they thought the timing was pretty atrocious, but I don't recall anyone saying, "You should not have written that memo."

Q The real problem regarding the memo was not that it was written but that it had gotten out, isn't that right?

A Yes.

Q When, to your knowledge, Mr. Porter, was Dr. Hostrop first told that the Board was considering terminating his position as president of Prairie State College?

A It would have been July 13th.

Q The meeting between Mr. Kloss and Mr. Scariano and Dr. Hostrop?

A Right.

MR. GIAMPIETRO: No further questions.

## CROSS EXAMINATION OF MISTER KLOSS

BY MR. GIAMPIETRO:

Q Mr. Kloss, what specifically do you recall having said to Dr. Hostrop in the meeting between yourself, Dr. Hostrop and Mr. Scariano on July 13th regarding the matter of a hearing before the Board?

A As I indicated in response to Attorney Scariano's question, this question was raised by Dr. Hostrop and I advised him that a hearing with the Board would be arranged and that we did want to conclude the issue prior to his departure on vacation.

Q So you told him at that time that the Board would in fact give him a hearing?

A Yes, sir.

Q Now, do you recall being present at the executive session of the Board on August 6, 1970?

A No, I don't specifically recall. I missed a number of meetings during the summer because of my employment demands.

Q Do you recall being at an executive session of the Board after Mr. Pappas' request and demand for a hearing had been served on the Board?

A I don't specifically recall.

Q Do you recall the Board ever having discussed the demand for a hearing that was made by Mr. Pappas on behalf of Dr. Hostrop?

A I don't personally recall, no, sir.

Q You recall nothing about that all?

A No, sir.

Q Mr. Kloss, I will show you what has been marked previously as Defendants' Exhibit 57 for identification, headed, "Executive Session August 6, 1970," and ask if you will look at that and see if it refreshes your recollection as to whether or not you were at such an executive session where the matter for a demand for a hearing was considered by the Board?

A Yes, this would indicate that I was in attendance.

Q Does that refresh your recollection in any way as to what happened at that meeting?

A Only what I read here, and I would assume that this is a true recording of what transpired at that meeting.

Q The minutes state, "Regarding the notice for a public hearing," again in reference to Dr. Hostrop, "Mr. Kloss asked Mr. Scariano what the legal obligation is and how did he recommend the Board proceed."

Do you recall having asked Mr. Scariano that?

A I do now, yes.

Q And do you recall what Mr. Scariano told you in regard to the question asked?

A I think the best evidence as to what Mr. Scariano told me is reflected in the letter which later went to Mr. Pappas over my signature.

Q That was the letter that said that he wasn't entitled to a hearing?

A That was our advise from counsel.

Q All right, and that is what Mr. Scariano told you on August 6th in the executive session, that Dr. Hostrop is not entitled to a hearing, and he failed to see what useful purpose it would accomplish, isn't that what happened at that time?

A I am not sure whether he told us that at that meeting, or whether he gave us the opinion a day or two following, but it grew out of the August 6th meeting.

Q Now, in regard to the contract dated April 2nd, Plaintiff's Exhibit 2, you did sign that contract on behalf of the Board, isn't that right?

A Yes.

MR. GIAMPIETRO: I have no further questions.

MR. SCARIANO: Just one question.

## REDIRECT EXAMINATION

BY MR. SCARIANO: Were you authorized by the Board to sign that contract you just referred to?

MR. GIAMPIETRO: I will object. That calls for a conclusion.

THE COURT: Overruled.

BY THE WITNESS:

A The minutes are clear, I think, in that the vote of the Board was only to authorize an extension of the then existing contract.

BY MR. SCARIANO:

Q All right, there was no motion or action taken by the Board authorizing you to sign that contract, is that what you are telling us?

A No, sir, beyond that there was not even any discussion of a new contract for Dr. Hostrop.

MR. SCARIANO: All right, I am through with Mister Kloss.

RECROSS EXAMINATION

BY MR. GIAMPIETRO:

Q You had received a draft of that contract prior to the meeting of April 2nd?

A As I testified when you had me on the stand as an adverse witness, counselor, I did—a packet was received at my home prior to that meeting. I was travelling up until the time of that meeting.

Q And other members had received copies of that contract?

A I cannot testify to that.

THE COURT: Everybody testified that they got one.

BY THE WITNESS:

A I did poll them individually to determine whether or not they had.

THE COURT: Well, they have already testified under oath that they did.

MR. GIAMPIETRO: Right.

BY MR. GIAMPIETRO:

Q And that contract was then signed?

THE COURT: Well, everybody has testified to that, too.

MR. SCARIANO: He has already said that, too.

MR. GIAMPIETRO: No further questions.

THE COURT: All right, let him go before Mr. Scariano thinks of another one.

(Witness excused.)

MR. SCARIANO: The Defendants rest, your Honor.

MR. PAPPAS: Plaintiff rests.

One thousand nine pages of courtroom testimony resulted from the seven day trial. My attorneys and I were pleased the way the trial *appeared* to go. Board members had admitted that my dismissal was primarily over my discussion memorandum recommendations concerning the Ethnic Studies Program and for my professional writing which Judge Austin, at least in Court, seemed to take strong exception to. No sustaining or damaging evidence was placed against me...with perhaps the exception of Kloss who had lied on the stand that he had not known of the difference in contract forms prior to the April 2, 1970 Board meeting...perhaps I should have had my wife testify since she heard me discussing the difference with Kloss by telephone, though her testimony would probably have been discounted as being "self-serving" on my behalf.

To me, the most surprising information to emerge at the trial was the fact that my secretary, Meredith Pommer, had snooped in my wastepaper basket for items which she believed Board members might find of interest...and also that she had been telephoning the Board Chairman to report my whereabouts in 1970 whenever I was out of my office.. As the Board Recorder, she had spied on me as a means of ingratiating herself with Board members...and for three years I had naively thought she and I had enjoyed an excellent professional relationship. How wrong I was!

Upon completion of the trial my two attorneys and I "celebrated" at a nearby pub. We were very confident of victory. Each of us was sure that it wasn't a question of *if* we won but rather *how much* was won. Board members had filed glumly out of the courtroom the final day of the trial. It should have been the other way around as later events unfolded. I expected reinstatement, with back pay, and some nominal monetary damages. Again, how naive I was!

In retrospect, when the trial ended, I believe my attorneys should have taken up Judge Austin's offer of accepting oral rather than written final arguments. Judge Austin was prepared to immediately go ahead...and the psychological as well as the factual and legal momentum seemed to be clearly in my favor.

It took three years and nine months before I had the "fair and impartial hearing" I was supposed to have had in the first place. The trial ended on May 10, 1974...and it wasn't until four months later, on September 23, 1974, that Judge Austin ruled that "on the law and on the facts, judgment must be rendered in favor of Defendants. Case dismissed."

While waiting for Judge Austin's decision to be handed down, it was very disturbing to me to learn that in May of 1974, a short time after the trial had ended, that an attorney in Joliet, Illinois, reported to James Pappas that he had seen Scariano and Judge Austin having dinner together at Helen's Lantern Club in Blue Island (a suburb of Chicago). Did I get a "fair and impartial hearing?" I think not.

I was even more convinced that I did not get the kind of hearing that our Constitution requires when carefully reading Judge Austin's reasons for "Case dismissed." [See appendices for full reasons]. At least one reason for upholding my dismissal as being just and proper had not even been in the charges brought up at trial! [It was a trivial matter pertaining to my not *immediately* informing the Board Recorder of a raise in salary the Board had voted for her.] The only place this small matter had been brought up was in Defendants' final written memorandum. Judge Austin's opinion amounted to paraphrasing Defendants' final written arguments. To me, there had been no need for a trial…the outcome had been preordained. The District Court's opinion proved it.

With this unjust decision my wife and I briefly but seriously considered immigrating to Australia. We had lost complete faith in our judicial system. We calmed down after a time. A second appeal was prepared and presented to the United States Court of Appeals.

## Chapter 22

# Up A Second Time To The Circuit Court Of Appeals For The Seventh District

In reviewing the written decisions of the District Court and the Circuit Courts, it became increasingly clear that the Courts were accepting the lying contentions in Defendants' briefs that I had every intention of implementing the discussion recommendations embodied in my confidential, discussion only, memorandum to my Cabinet of May 25, 1970 without the Board's approval or knowledge (notwithstanding that Defendants' courtroom testimony proved otherwise). Scariano, in his written arguments, simply ignored and twisted facts out of context with the "ethical standard" that "winning is the end all," claiming I had planned such implementation effective July 1, 1970. My attorneys and I were remiss in not more forcefully counter attacking Defendants' arguments by my June 12, 1970 confidential Board memorandum reproduced below:

June 12, 1970

To: Illinois Junior College District 515 Board of Trustees

From: Richard W. Hostrop

Subject: Ethnic Studies Program...

The attached strictly confidential discussion memo came into the hands of Benjamin Cooke. It seems only logical and obvious that he was given this memo by a member of the Cabinet. though I strongly suspect who that individual is, it is based only on circumstantial evidence, therefore I hesitate to provide a name.

Mr. Cooke, upon receiving this memo, requested to appear before the Union and others to seek their support to not make any changes in the Ethnic Studies Program for next year. He also has gone to the STAR publications - and perhaps other publishers as well (including an "underground" student newspaper.) As a consequence, I have been put in the position of replying to a "bootlegged" discussion memo which has been taken as a policy statement.

The attached memo [the infamous May 25, 1970 memorandum] is not my position. My position is joint faculty appointments and course approvals, etc. between the departments and the director - and where no agreement can be reached between the director and the department chairmen, the Vice-President - Instructional Services will intervene. As far as the Ethnic Studies Center is concerned, I favor it remaining as such - but with other activities moved into it as well, such as the Student Senate office and the Student Publications office. I favor, as the memo states, all funds for community services be budgeted and supervised by the Dean of Continuing Education (Ashley Johnson) with all departments presenting their community services to him for approval and funding - including the Ethnic Studies Program - the Board may feel otherwise on this - if so, that is for the Board to decide during budget discussion.

I talked to Mr. Cooke about joint appointments at the end of May and there appeared to be at least agreement, if not enthusiasm, for joint appointments. No decision was made with respect to the house. I asked him on June 4 and again on June 9 to come to talk with me. I wanted to discuss the house and other points. Unfortunately, in between the first conference at the end of May and now, he came into possession of the discussion memo and took it as "the way it is going to be" notwithstanding our discussion or the fact that the memo clearly states that the purpose of the memo was for discussion purposes. The

> Cabinet had discussed the problems associated with the Ethnic Studies Program (and others!) several times and it was believed it would be helpful if a paper was prepared for discussion which was somewhat an amalgamation of views expressed [the May 25 memo].
>
> Had this discussion memo not been "leaked," I feel confident that the concerns expressed with respect to the Ethnic Studies Program could have been resolved to everyone's satisfaction - including Mr. Cooke's. Unfortunately, he and certain others are using the discussion memo "as the way it is going to be" when in fact my position is different (as is the Cabinet's) than the paper itself. Had Mr. Cooke seen me on or about June 4, as I had requested - (before the memo fell into his hands), there would be no problem now. Because he has chosen to appeal to public opinion via faculty, students and the newspapers, a very awkward situation has resulted - to say the least.
>
> The Board is being apprised of these developments so as not to be surprised. In the meantime, I am still trying to get Mr. Cooke to come in and sit down to discuss things as they are - not as he imagines them to be. Moreover, no final decisions have been made since it has been my hope and intention from the very beginning to reach mutual agreement with Mr. Cooke on his program in all or as many areas as possible. He has been involved and will be involved before any final decisions are made.

Had the above memorandum been more forcefully used in the Circuit Court of Appeals, perhaps the ultimate outcome might have been more favorable to me...but still, there had been a "fair and impartial hearing" before Judge Austin?

Judge Austin lived, voted, and paid taxes in the district served by Prairie State College. His son was on a feeder elementary school board. One of his son's friends was a fellow attorney, and now a Prairie State College board member as well. Judge Austin had dismissed my case on two occasions. He had refused me a jury trial. He failed to act on my accumulated 49.6 vacation days. He apparently had met socially with Scariano a short time after my trial had been held before him...and before he had dismissed my suit a second time. He was a member of the same country club as Prairie State College Board Chairman

Kloss. The Court of Appeals had once overturned him which he openly ridiculed in his courtroom before my trial had begun...and the United States Supreme Court also had repudiated Judge Austin previously by refusing to disturb the opinions of the Circuit Court of Appeals in my case. With such a background, there were no ingredients to ensure that I had received a "fair and impartial hearing" in that courtroom. But to *prove* "prejudice" on the part of a federal judge is not something easily done...nor would any attorney risk his career in an attempt to try and prove it. I can only state, given my First Amendment right to state it, I believe that Judge Austin did *not* give me the fair and impartial hearing that our Constitution requires. I believe had there been almost any other judge, the final results would have had an entirely different outcome.

The United States Court Appeals for the Seventh District in Chicago, Illinois had a much harder time with *Hostrop* on the second appeal than with the first. This time the Court was faced with the "fact" that an "impartial" hearing had been held by an "unbiased" hearing officer—Judge Austin. The Court of Appeals could not challenge Judge Austin's findings of *fact* , only of law. Nevertheless, the Court partially overturned Judge Austin's interpretation of the law.

My attorneys, and Anthony Scariano for the Defendants, presented written arguments to the Court of Appeals on December 23, 1974. Nine months later, on September 24, 1975, the three member Court's opinion was handed down. The important Constitutional issues decided by the Court follows:

> We hold the District Court's findings of fact on the first amendment issue are not clearly erroneous, but that plaintiff's procedural due process right was violated by the failure of defendants to afford him a hearing and he is therefore entitled to recover damages against the board but not the individual defendants, who are protected by official immunity. We remand for a hearing on damages, which need not be before a jury. (at 1)

The Court ruled, contrary to the repeated contention of Defendants, that multi-year contracts for administrators are legal and that Defendants could not unilaterally declare the contested contract "null and void" without due process. However, the Court also ruled:

> The District Court has found, in findings we cannot say are clearly erroneous, that plaintiff was terminated for reasons amounting to just cause. Given the nature of the findings, *viz.* that certain conduct of plaintiff identified by the District Court "substantially impeded the Board's normal functions, critically impaired the personal working relationship between the parties, and completely destroyed the Board's confidence in Plaintiff's loyalty and abilities," it is inconceivable that even if plaintiff had been accorded his procedural due process rights he would have been allowed to continue in office. We have already pointed out, in holding that the defendant board members are entitled to immunity, that in failing to give plaintiff a notice and a hearing they did not act maliciously and, in view of the state law of 1970, could not have reasonably been expected to know that they were violating plaintiff's constitutional rights. In view of all these circumstances, justice would not be served and plaintiff would be given a windfall at the expense of the taxpayers of the school district if we were to hold that he is entitled to the same damages that would be recoverable if the contract had been terminated without just cause, although we recognize that one court has adopted this approach, without, however, much discussion of its reasons, see *Zimmer v. Spencer, supra,* 485 F .2d at 179. (at 16-17)
>
> The question of damages is an issue of fact which should be decided by the trial court. See *Wayne v. Venable, supra,* 260 F. at 66. It is therefore necessary to remand the case for a determination of the damages fairly attributable to the failure to afford plaintiff the due process hearing to which he was entitled. The civil rights cases just cited indicate that the non-punitive damages to be awarded may be special, in the sense that they are related to the particular mental distress or other injury to the plaintiff, and general, in the sense that the damages are inherent in the nature of the wrong. Thus the factors which the trial court should consider in making this award will include the nature of the constitutional deprivation and the magnitude of the mental distress and humiliation suffered by the plaintiff, as well as any other injury caused as a result of being deprived of federally

protected rights, but not, in view of *Alaska Pipeline Service Co. Wilderness Society*, 95 S.Ct. 1612 (1975), attorneys' fees. Under the circumstances, plaintiff should also recover his costs, both in the District Court and in this court. (at 17)

The case is remanded for a hearing on damages.

AFFIRMED IN PART AND REVERSED AND REMANDED IN PART

The Court's findings have profound meanings for contractual employees. With the one hand the Court stated multi-year contracts are legal but with the other hand took away nearly all the benefits deriving from a written contract *of any duration*. The Court in essence said that if a contract is abrogated for "just cause," then the employer need not pay anything on it as it would be "a windfall" for the employee at the expense of the taxpayer (employer). In short, all an employer or a governing board need do is to hold a "kangaroo court," find the employee "unfit," and then immediately dismiss him or her. At the worst, the kangaroo court type hearing *might* result in what amounts to a small "fine." This very important point will be discussed at greater length in Chapter 24.

What to do? It didn't take long to decide. BOTH parties appealed to the United States Supreme Court...Defendants for a second time, *Hostrop* for the first time.

## Chapter 23

# Up A Second Time To The United States Supreme Court And Back Down To The Federal District Court For A Third And Final Time

Unfortunately, by the *Rules of Legal Procedure*, my attorneys could not argue the unfairness of Judge Austin's denial of a jury trial nor his bench trial decisions. Only law, not findings, could now be argued.

The ruling of the Court of Appeals that valid contracts are monetarily unenforceable if a governing board finds the holder of the contract "incompetent" resulted in a great deal of interest. Public employee unions, administrators and managers anxiously awaited the outcome of my "Petition for Writ of Certiorari to the United States Court of Appeals for the Seventh District" which was presented to the United States Supreme Court in October 1975. This was to be the second landmark decision.

The first time the Defendant Board had appealed to the United States Supreme Court. The two landmark decisions were affirmed: Administrators and managers *are* entitled to the same *due process procedures* as their subordinates—advance charges before any action is taken and a hearing before an apparent impartial hearing body…and *freedom to responsibly speak out and write* on issues concerning the organization in which they are a part. The egregious 1970 Prairie State College Board of Trustees believed administrators and managers had no rights —they and thousands of other public bodies have had to make new accomodations to their administrative staffs—no more do administrators serve "at the pleasure of the board."

I presented two questions before the United States Supreme Court. The first was: "Whether an employee of a State agency whose constitutional rights to due process have been violated by refusing to grant him a hearing may be foreclosed from recovering damages based upon the salary due him under a written employment contract?" Defendants opposed the granting of the *Writ of Certiorari* in their summary sentence which was "Taxpayers should not be obligated to pay contract wages to an individual who materially breached that contract because the public agent blundered, in good faith, by failing to accord him a hearing required by the Constitution."

The second question I presented before the Supreme Court was: "Whether a State employee's rights to freedom of speech may be denied him under the guise that it is the manner in which speech is communicated, rather than the content, which is being punished?" Defendants answered this petition as follows: "...The District Court found, and the Court of Appeals concurred specially in the finding, that certain conduct of Petitioner, including the timing and concealment of the Ethnic Studies Memo, 'substantially impeded the Board's normal functions, critically impaired the personal relationship between the parties, and completely destroyed the Board's confidence in the Petitioner's loyalty and abilities.'"

The first question the Defendant Board put before the highest court in the land was: "Whether the requirements of procedural due process prohibit elected members of a Community College Board of Trustees, who have exclusive responsibility under state law to do so, from discharging an admittedly incompetent and deceitful College President solely because the close working relationship between them required that the Board members witness first hand their Executive Officer's incompetence and deceit?" My attorneys, on my behalf, answered as follows: "...Whatever else Due Process may mean in varying contexts, it means that the prosecuting witness cannot also be the judge. That is the proposition for which the decision of the Court of Appeals stands, and nothing more. Such a decision presents no new or novel issue to this Court. That decision does not form the basis for a grant of Certiorari by this Court."

Defendant Board's second question was: "Whether a public body's execution, in good faith, of a legislative command, which results in an alleged denial of a discharged President's constitutional rights, subjects that public body to liability for damages?" My reply was: "...The argument presented by defendants is that the only way a Board could have complied with the constitutional requisites was by terminating Plaintiff. Such an argument is ingenious. Although the Board itself must take action regarding Plaintiff's employment, pursuant to Illinois law, there is nothing which would have prohibited them from refraining from making any decision without giving Plaintiff a hearing. Further, there would have been nothing wrong with the Board having hired a hearing officer, or a panel of arbitrators, or the like, to hear evidence and make recommendations upon which they might ultimately act...."

The above four questions, two for each side, obviously intrigued the Supreme Court since instead of either agreeing or denying to hear the respective *Petitions for Writ of Certiorari*, the highest court in the land asked for additional written arguments from both parties before deciding to hear or not to hear the appeal(s). However, in the end, both sides' appeals were denied, meaning that the Opinion of the United States Court of Appeals for the Seventh District was the law of the land as pertaining to the issues raised on appeal. It is my belief that if powerful public employee groups had joined me as *amicus curiae* before the Supreme Court, the Court likely would have heard oral arguments for the decisions rendered by the Seventh District, for the most part, adversely affect millions of public employees in and out of the education profession.

The most salient feature of the Circuit Court's decision the second time I appeared before it was concerned with the worth of a contract. As stated in the previous chapter, written contracts are not worth the cost of the paper the typewritten words appear on *unless* they include certain items that will be recommended in the next chapter.

Now that both parties to the long dispute had failed on their appeals to the Supreme Court, only one final step was left...a final return to the District Court for the levying of damages for the Board's refusal to have granted me a fair and proper hearing. To my great relief, Judge Austin never received the case because he went into retirement. The case Judge Austin had dismissed was now before Federal District Judge Will. Reproduced below is *Plaintiff's Post Trial Reply Memorandum* presented before Judge Austin by my attorneys along with Judge Austin's opinion and Judge Will's directives. The significance of these actions are explained in the "Civil Rights of Administrators" chapter which follows this one.

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

RICHARD W. HOSTROP )

Plaintiff )

317

vs. ) NO. 71 C 147

BOARD OF JUNIOR COLLEGE DISTRICT)
No. 515, etc., et al., )
Defendants )

# PLAINTIFF'S POST TRIAL REPLY MEMORANDUM

Defendants' Post-Trial Memorandum filed in this matter is a remarkable document. Faced with their own admissions which prove plaintiff's case, they resort to an attempt to overwhelm the Court with the weight of their rhetoric, apparently attempting to make up in sheer quantity what they do not have in quality.

The number of distortions, half-truths and outright false statements is remarkable. Were Plaintiff to attempt to respond to each and every one of these statements which are either false or misleading, this Reply Memorandum would be as lengthy and prolix as is Defendants' Memorandum. We will not attempt to do so, but will concentrate upon the important issues in this matter. The Court heard all of the testimony, and we will not attempt to rehash all of it.

## The Opinion of the Court of Appeals

Defendants' interpretation of the Opinion handed down by the Court of Appeals in this case is nor only remarkable, it is downright dishonest. The defendants come to the completely unsupported conclusion that in the light of the facts of this case, as brought out at the trial, which were not before the Court of Appeals, plaintiff was not entitled to a hearing. Such a suggestion cannot be made in good faith. The holding of the Court of Appeals is clear, and not subject to defendants' interpretation.

The Court clearly held that in order for defendants to be able to discharge plaintiff for his speech, in connection with the ethnic studies memorandum, they would have to "show that its functions are being substantially impeded by the employee's statements." The Court went on to state:

> "We find that Dr. Hostrop's suggestions about the ethnic studies program which appear in the complaint cannot, on their face and by themselves, be taken as a serious impairment of the effectiveness of the working relationship between him and the Board that defendants could discharge him merely for making the suggestions. Absent actual proof of such impairment, the face of the pleadings shows no reasons to deny Dr. Hostrop's first amendment rights."

It is not open to question that the Board was required to show actual proof of the impairment of the working relationship between plaintiff and itself in order to use this as a reason for his discharge. Such proof has not been adduced. As is plain from the record, Plaintiff did not suggest that these changes be made, and he specifically told this to the Board. This was a memorandum for discussion purposes only between Hostrop and the members of his cabinet. As was aptly stated by the Court: "Plaintiff, as a public employee, is entitled to be protected from retaliation for actions which he had every reason to believe were a part of his assigned duties." At no time did defendants contend that the writing of such a memorandum or discussion of its subject matter was not a legitimate part of plaintiff's duties. Their only objection to the memorandum, according to their testimony, was that its timing was inappropriate. They have failed to sustain their burden of prooving actual impairment of their working relationship as a result of the publication of this memorandum, and therefore, Plaintiff has proved his allegation that his First Amendment rights were violated.

The second part of the Court of Appeals' decision is similarly misstated by defendants. The court did not hold only that plaintiff was entitled to "some form of hearing before his discharge." Contrary to defendants' contentions, the Court balanced the interests of plaintiff vis a vis the Board, and upon balancing, held:

> "We find the resolution of these interests requires that plaintiff be given notice of the charges against him, notice of the evidence upon which the charges will be based, a hearing before a tribunal possessing apparent impartiality, and a chance to present witnesses and confront adverse evidence at the hearing."

This holding was not contingent upon any further proof being adduced at the trial of this matter. Plaintiff has proved, without contradiction, the facts upon which this holding was based:

> 1. The statements used to justify his dismissal charged him with unsavory character traits such as dishonesty;
> 2. An extinguishment of a legitimate claim of entitlement to his job.

The Court of Appeals did not hold, as asserted by defendants on page 8 of their memorandum, that if plaintiff rights to liberty and property were violated he had a right to a hearing. Rather, the Court held that the failure to give plaintiff a hearing was a deprivation of liberty and property. The fact that plaintiff had a contract, and the reasons given for his termination charging him with dishonesty give him a right to a hearing—not some kind of hearing, but the kind of hearing mandated by the Court in its opinion. He was deprived of this, and has clearly proved his case.

Defendants claim that plaintiff has proved no damage to his standing in the community as a result of his discharge. What greater evidence of damage to his standing in the community could there be than the uncontradicted proof that as a result of his discharge, he has been unable to obtain employment in his field of endeavor, despite numerous attempts to do so. This is the clearest possible proof.

While it was plaintiff who finally released the charges made against him in the press, his reason for doing so was sound. The rumors going around were much worse than the actual reasons given, and plaintiff was merely trying to mitigate his damages, and salvage what he could of his reputation.

## Validity of Plaintiff's Contract

Defendants have put forth the astonishing contention that plaintiff had absolutely no contract rights at all, on the ground that his contract was void. Such an argument is sheer sophistry.

Of the cases cited by defendants in support of this argument, only three, Stevenson vs. School Directors, 87 Ill. 255 (1877), Davis vs. School Directors, 92 Ill. 293 (1879) and People ex rel. Fursman vs. City of Chicago, 278 Ill. 318 (1917) hold that a school board may not enter into an employment contract extending beyond its term of office. However, none of those cases hold that a multi-year contract is void. All they hold is that the contract may not be enforced beyond the one-year period. Thus, even under these cases, plaintiff has a valid contract for at least one year, as the Board had signed a new contract in April, 1970, commencing July 1, 1970. Thus, plaintiff still was entitled to a hearing before this agreement could be abrogated.

More importantly, however, the Illinois Courts overruled the above three cases. In Sloan vs. School Directors, 373 Ill. 511 (1940) the Illinois Supreme Court stated that the above three cases were inapplicable since they had been decided before the enactment of the Illinois Tenure Act, which allowed contracts for teachers, principals and superintendents for up to three years' duration.

People ex rel Davidson vs. Bradley, 382 Ill. 383 (1943) does not support defendants, holding only that a teacher must acquire tenure under the state tenure law, and cannot acquire tenure by custom and usage.

Thus, we must look to the State statutes to determine whether the Board has the power to enter into an employment contract for a term in excess of one year. The statutes in existence at the time, and still in existence, make it clear that the Board did in fact have the power to enter into multi-year contracts. Specifically, Ch. 122 Ill. Rev. Stats. ß103-32 (1969) states that the Board has the power "To establish tenure policies for the employment of teachers and administrative personnel, and the cause of removal." Obviously, the entire concept of tenure contemplates employment for a term in excess of one year. The language of the statute is applicable to administrators, as well as teachers. The Board had the statutory authority to enter into the kind of agreement it did with plaintiff. The contract is and was valid.

Defendants' constant prating about the deletion of the term from the contract requiring plaintiff to devote full time to his duties as president of Prairie State College is not only foolish but actually dishonest. Each of the Board members who agreed to plaintiff's contract the year before were sent a copy of the proposed contract in advance by plaintiff. Dr. Collins clearly testified that the Board was aware of the deletion of the term on the April 2, 1970 meeting when the matter was discussed. There was no dishonesty of any kind by plaintiff here.

As pointed out previously, the deletion of this term is not as important as defendants would have the Court believe. They did not enter into any written contract with plaintiff's successor and did not insist upon such a provision when hiring such successor, but were content to rely upon the Board's policies and procedures in setting his time requirements on the job. Thus, defendants have demonstrated that they agreed with plaintiff's position that the Policies and Procedures of the Board are sufficient in this respect.

## Plaintiff Waived No Rights

Defendants' contention that plaintiff waived his rights to a hearing, and the formalities leading up to such a hearing is as specious as their contentions.

The first that plaintiff heard that the Board was considering his termination was at the conference between himself, Mr. Kloss and Mr. Scariano on July 13, 1970. No mention whatsoever of termination had been made prior to that. Defendants' belated contention that they were prepared to give plaintiff a hearing at the Board meeting on July 23 is not supported by the documents, and the testimony. Almost to a man, the defendants testified that their minds had been made up to terminate plaintiff, and that Kloss had been instructed to tell Plaintiff, on July 13, 1970, that either he resign or be terminated. The decision had been made. Any hearing would have been a farce.

As set out in Plaintiff's original memorandum, plaintiff was not given notice of the reasons to be relied upon for his termination prior to July 23. Even had the Board been prepared to set forth these reasons at that time, this would not comply with the requirement that plaintiff be given "notice of the evidence upon which the charges were based" and "a chance to present witnesses."

The discussion of the Board concerning plaintiff's demand for a hearing, held at the Executive Session of the Board on August 6, 1970, is indeed illuminating:

> "Regarding the notice for a public hearing—Mr. Kloss asked Mr. Scariano what the legal obligation is and how did he recommend the Board proceed. Mr. Scariano said that Dr. Hostrop is not entitled to a hearing and he failed to see what useful purpose it would accomplish. Mrs. Hill asked what effect having or not having a session with Dr. Hostrop would have on a future court case. Mr. Scariano said none at all. He said Dr. Hostrop's remedy is solely a breach of contract suit in the courts." (P. Ex. 57)

Does this exchange indicate an intention to grant plaintiff a hearing? No. Shortly after this, the letter went out informing plaintiff and his attorney that their demand for a hearing would not be honored. The self-serving declaration that a hearing would be afforded are shown to be what they are by the Board's own minutes. No hearing was contemplated; none was going to be held. The law does not require a person to perform a futile act. Indeed, had plaintiff and his counsel appeared before the Board, defendants would now be contending that plaintiff had acquiesced in the procedure followed by the Board, and had thereby waived his right to object to the procedures which had been followed.

Even further proof that defendants did not intend to grant plaintiff a hearing is the fact that the notice of meeting for July 23, 1970, (P. Ex. 3) made absolutely no mention for which the meeting was to be held, or that plaintiff was going to be granted a hearing. Such a notice is required under the guidelines set forth by the Court of Appeals.

Defendants' attempt to show that plaintiff was required to attend this meeting is an example of the manner in which they twist and turn the testimony at the trial to serve their own purposes. On page 18 of their brief they purport to show that plaintiff admitted that he was required, by the Board Policies and Procedures, to attend this meeting. That plaintiff did not agree to such a proposition is obvious from the context of his answers to the questions. Furthermore, the policy 2.30 (4), D. Ex. 47, clearly states that the President is to attend meetings "except when his own salary or contract is being considered." There is no question that plaintiff's contract, and contract status was being considered at this meeting, and he therefore was not obligated to attend.

Defendants' further attempts to indicate that plaintiff was aware of the reasons for his termination is another gross distortion of the record. On pages 20 and 21 of their memorandum, they set out several subjects which plaintiff had discussed with the Board, certain subjects, which were later put into reasons for plaintiff's termination. Of course, plaintiff discussed these matters with the Board. That was his job as president of the college . What defendants conveniently omit stating, is that at the time that plaintiff discussed these matters with the Board, in the form of back-up material for board meetings, he had absolutely no idea that these matters were considered by the Board to be reasons for the termination of his position with the school. At the time these memoranda were written, he had been given absolutely no warning that the termination of his services were under consideration. The unfairness of such argument is patent.

For example, defendants refer to plaintiff's discussion of non-college" activities. The discussion of this matter consisted of plaintiff giving a report to the Board of certain activities in which he was, or might be involved. At no time until the after-the-fact charges were served upon him was he aware that this was a matter of concern by the Board which would be given as a reason for his termination.

The statement that matters steadily worsened between the workshop of June 20 and July 23, 1970, is nothing but a conclusion of the various defendants. Not one fact has been advanced to support this conclusion.

Defendants reliance upon Birdwell vs. Haselwood School District, 491 F. 2d 490 (8th Cir. 1974) is misplaced. The fact situation there has absolutely no resemblance to the case at bar. There, the plaintiff was a probationary teacher who objected to members of the military appearing on the grounds of the high school at which he taught to speak to students regarding the R.O.T.C. program. In voicing his protests, he suggested to the students and members of the faculty that the students take overt action to keep these people off school grounds, such as throwing apples at them, pushing them, kicking them, etc. He then informed these military personnel that they were not wanted on campus, and that a restraining order was being procured to require them to leave. The Court found there that these actions interfered with the educational process and were "infused with the spirit of violent action."

In the factual context of that case, the Court found a voluntary and knowing waiver of his right to a hearing, because he was "aware of the time and place of the Board meeting, that his continued employment was at stake, and that his dismissal was being recommended because of his actions in class and his actions towards the servicemen in the building. That case involved a limited incident, not broadening alleged dissatisfaction with over-all performance.

That fact situation is not apposite here. As has been demonstrated, plaintiff was not aware of the reasons that his termination was being recommended, beyond the few items which were mentioned at the conference on July 23, 1970, with Kloss and Scariano. And, has been referred to previously, he was informed at that time and place that no hearing would be afforded him then in any event. As set forth in plaintiff's original brief, the notes which plaintiff kept of that meeting corroborate his testimony. (P. Ex. 38)

There was no waiver here by plaintiff of any rights whatsoever. As noted by defendants, the fundamental requirement of due process is "the opportunity to be heard at a meaningful time and in a meaningful manner." Ahern vs. Board of Education, 456 F. 2d 403. It is clear that the alleged hearing allegedly offered by defendants would not have been afforded plaintiff opportunity to be heard at a meaningful time and in a meaningful manner, when he was not told of the charges which he would be called upon to answer, or the evidence upon which they were based, much less having been given an opportunity to prepare a defense or to call upon witnesses to support his side of the situation.

## Plaintiff's Rights were Violated

Aware of the weakness of their position , defendants persist in their contention, which has been expressly rejected by the Court of Appeals, that plaintiff was entitled to no due process rights, and that his First Amendment rights have not been violated. That they have the termerity to make this assertion in light of the clear opinion by that Court is an affront to the intelligence of this Court.

The Court of Appeals did not send this matter back to this Court for a weighing of the interests of plaintiff and the Board, but made that determination in reaching its opinion. It expressly stated that if defendants were to show that they had a right to dismiss plaintiff on the basis of the memorandum concerning the Black Studies Program, they must show an actual impairment of the working relationship between the Board and the plaintiff. This they have not done.

Regarding the Black Studies memorandum, defendants have constantly and consistently misstated the facts. At no time did plaintiff ever recommend to the board that the program be changed. In fact, he informed the Board that he intended to make no such changes. At no time did even the memorandum itself state that there would be any change in the Ethnic Studies Program itself. It is undisputed that the changes proposed in that program would have absolutely no effect whatsoever upon the content of the program. The only person who would be effected by the changes proposed in the memorandum was Mr. Cooke, in that his duties would be changed. There would be no effect at all on the students. This is the only change recommended in that memorandum. No facts whatsoever have been produced by defendants which would lead to a conclusion that plaintiff mishandled this program. Indeed, if there was any mishandling of the situation, it was the Board itself, which allowed one administrator, Mr. Cooke, to disrupt the entire campus as a result of his own search for personal aggrandizement.

In addition to penalizing plaintiff for his exercise of his First Amendment rights in writing the memorandum concerning the Ethnic Studies program, the Board's charge that plaintiff wilfully failed to inform them he planned to author several books is another violation of these same rights. In fact, this charge is false, and defendants have introduced no evidence to support it. We have yet to hear any reason why plaintiff was not entitled to author books when others holding similar positions with other junior colleges are entitled to do so.

The cases cited by defendants on pages 32-37 do not support their position. In those fact situations, it was held that certain employees may be dismissed with or without cause, and that the courts will not impose tenure rights to persons within these policy-making positions. However, here, the Board itself has invested plaintiff with tenure by entering into a written contract for a certain term. That was recognized by the Court of Appeals in its decision here.

Finally, the Court of Appeals reference to various factors regarding the closeness of the working relationship between plaintiff and the Board, which it concedely did not have before it, had nothing to do with the rights possessed by plaintiff insofar as freedom of speech and due process are concerned, but with the reasons which could be used by the Board for terminating plaintiff's employment. There is no doubt that the reasons for which a college president may be discharged may be different than the reasons for which a teacher may be discharged. That does not mean, however, that plaintiff's procedural rights are thereby abrogated. Such is not the law. This is specifically recognized by the Court of Appeals in footnote 115, where it states: "There will be occassions when one action [violation of civil rights] will lie but the other [breach of contract] will not, as when the state has grounds to break an employment contract, but does so by violating an employee's due process rights to notice and a hearing." Here, the record makes it obvious that both actions lie.

While defendants spend a great deal of space regarding the relationship between plaintiff and the Board, (pp. 38 to 50, defendants' memorandum) all this discussion is couched in generalities. We are dealing with whether or not defendants have introduced evidence sufficient to lead this Court to conclude that they have proved their reasons set out in their decision to terminate plaintiff's employment. We submit that they have not. The Court heard the testimony of the various witnesses and observed their demeanor. While asked time and time again to make specific complaints, they could not do so. Their testimony was replete with evasions, ramblings, but precious few facts. Their self-serving conclusions are entitled to no weight, and this Court should disregard them. What was said in plaintiff's original memorandum bears repeating here in regard to plaintiff's termination. The Board was in trouble with the community, the students and the faculty. It had to do something, so it chose to make plaintiff a scapegoat. Its reasons given in support of termination are not persuasive, and are patently unsupported and unsupportable.

## Defendants are Entitled to No Immunity

Defendants make the claim that even if they are found to have violated plaintiff's rights, they are entitled to be relieved of bearing the burden of the damages which they have caused plaintiff. That they have the temerity to advance such a contention is perhaps to be expected in light of their cavalier attitude toward plaintiff's rights throughout this entire proceeding. That it has absolutely no basis in law is also not surprising.

The law regarding immunity of officials such as defendants is aptly set forth in Donahue vs. Staunton, 471 F. 2d 475 (7th Cir. 1972e), where the Court of Appeals affirmed a decision by this Court finding that a chaplain at a state mental hospital had been wrongfully discharged in violation of his right to freedom of speech. In that case, the Court stated, at p. 482:

> "...defendants claim that since the court below did not specifically find that they acted in bad faith, they are entitled to immunity from all damages. However, it is a necessary implication of the court's decision and judgment against the defendants that they acted without justification in the case at bar. 'At best, defendants qualified immunity in this case means that they can prevail only if they show that plaintiffs were discharged on justifiable grounds. Thus, here a successful defense under the qualified immunity doctrine."

As has been set forth above, defendants here did not show that plaintiff was discharged on justifiable grounds. In regard to their assertions of good faith, plaintiff is moved to ask the following questions:

> Is it good faith to promise plaintiff an opportunity to respond to their concerns (without informing him that they are considering his termination), and then delay such an opportunity, while at the same time holding secret meetings with a view toward getting rid of him?

Is it good faith to send the chairman of the board to inform plaintiff that he must either resign or be discharged and then contend that they were prepared to grant plaintiff a fair hearing on charges which were prepared after the fact, and upon which they were the accusers?

Is it good faith to arrange for plaintiff's successor prior to the time they were allegedly prepared to grant him a fair and impartial hearing?

Is it good faith for two members of the Board to vote in favor of plaintiff's discharged even though they were not present at the meeting?

Is it good faith to constantly misstate the evidence?

It is submitted that the answer in each instance must be negative.

In this connection, it is obvious from defendants' own testimony that they have been guilty of conspiring to deprive plaintiff of his rights. By their own admission, they held secret meetings with the purpose of determining how to terminate plaintiff's employment, at a time when they had previously agreed to meet with plaintiff to discuss their concerns with him. A majority of the defendants have agreed that it was determined that plaintiff must be terminated, prior to the time he was informed this step was under consideration. Kloss was directed to so inform plaintiff.

The classic definition of conspiracy is a combination of two or more persons by concerted action to accomplish an unlawful purpose or a lawful purpose by unlawful\ means. *United States vs. Bazzell*, 187 F. 2d 878 (7th Cir. 1950), cert. den. 342 U.S. 849; *Mavros vs. ST. Paul Fire & Marine Ins. Co.*, 296 F. 2d 271 (7th Cir. 1962). There can be no serious contention that these defendants did not combine to deprive plaintiff of his employment rights without giving him due process and First Amendment rights. They have convicted themselves out of their own mouths.

## Damages

Defendants make no serious attempt to refute the damages to which plaintiff is entitled. Indeed, they cannot do so.

Defendants mention the royalties earned by plaintiff from the Learning System Company. They omit the fact that these royalties are from books which were written and published prior to plaintiff's termination from his position with Prairie State College and that he would have earned these royalties and received this income even if he had not been terminated. One wonders why they have mentioned this item at all. Indeed, this reference to the paltry sums earned merely serves to highlight the damages visited upon plaintiff.

Similarly the income from Shoestring press was income which he was earning while employed by Prairie State. As to the income of $4800 from the publishing company, only half of that is income attributable to plaintiff. Indeed, this again serves to highlight plaintiff's damages. He has been able to earn only $2,400 in one year in replacement of the salary of $29,000 which he was to have been earning as President of Prairie State College. Again, this highlights the damage which has been visited upon him by defendants. Under Illinois law, the income which plaintiff received from these collateral jobs is not to be deducted from damages for which defendants are liable. People ex. rel. Bourne vs. Johnson, 32 Ill. 2d 324, 205 NE 2d 470 (1965).

As set forth by the Supreme Court of Illinois in the last-cited case, the theory underlying damages in a suit for wrongful discharge is to compensate the employee to the extent that the wrongful deprivation of salary has resulted in financial loss.

Defendants have made no attempt to seriously refute the damages demonstrated by plaintiff, and therefore must be deemed to have admitted that plaintiff is entitled to the amounts claimed.

## CONCLUSION

That this case has proceeded to this point is indeed tragic. Defendants have not attempted to refute the obvious conclusion that plaintiff's career has been ruined just as it was reaching its fruition. Prior to his discharge here, he had never been discharged by an employer. His career had shown a steady climb to positions of more and more responsibility. Suddenly, that career has been shattered. The evidence is undisputed that despite great efforts, plaintiff has been unable to obtain other employment in his field of endeavor, and has been required to start another career.

Such a tragedy could have been averted by the simple expedient of the defendants having acted with common decency and fairness. This they have failed and refused to do throughout these entire proceedings. Indeed, had the defendants even agreed to "buy up" plaintiff's contract, as they had instructed him to do in the case of Mr.

Savage, this matter could have been avoided. Yet, the only offer which the Board was prepared to make was "one half year's pay and it was not negotiable--$14,500 and a resignation." (P.Ex. 5)

Instead of acting fairly, and agreeing to meet with plaintiff in an effort to resolve this matter, they sent their Board Chairman, Lester Kloss, to plaintiff with an ultimatum: resign or be fired. And this, on the first occasion that termination had ever been mentioned to plaintiff.

To say that defendants have been less than candid with the Court in this matter is an understatement. They have told this Court that matters were in such a turmoil on the campus that they feared for the safety of students and personnel. They have attempted to lay all of this turmoil at the feet of the plaintiff, as if he were the sole cause of this condition. Yet, the former Chairman of the Board, Dr. Collins, testified that the turmoil and problems at the school had existed for a considerable period of time and that "Jesus Christ himself" could not have solved some of the problems.

Was the cause of the turmoil on campus the result of Mr. Cooke's protest that his job was being emasculated by a discussion memorandum? Or was the turmoil on campus the result of the inability of the Board, through its negotiating committee (of which the plaintiff was not a part and in which negotiations he was not directly involved) to reach an agreement with its teachers to the point that a disruptive strike was occurring--a strike which caused picketing at Mr. Kloss' home during the very time the Board was discussing other matters with plaintiff; picketing which caused Mr. Kloss to leave the meeting from time to time?

Was there picketing over the Black Studies Memo? Was there picketing over plaintiff's alleged failure to maintain good community relations? Was there picketing over the failure to have a budget ready (which was due to the fact that the person charged with preparing the information for the budget was involved in the negotiations with the striking teachers)?

Were any of the Board meetings disrupted to the point that they had to be adjourned while plaintiff was President of Prairie State?

Was the cause of the turmoil on campus Dr. Richard Hostrop? Clearly not. Was Dr. Hostrop the cause of Prairie State's problems? Clearly not. Did the dismissal of plaintiff cure the turmoil on the campus and within the community? Clearly not.

The record in this case taken as a whole points to one and only one conclusion. Richard Hostrop was the sacrificial goat. His firing was a symbolic act by the Board in an attempt to appease a community which was clamoring for action and direction from a Board which was unable to provide it. His rights have been disregarded, and he has been damaged grievously. His contract has been breached.

Plaintiff is entitled to judgment in the amount claimed in plaintiff's original memorandum. Defendants have knowingly chosen this course of action. They must now pay the consequences.

Respectfully submitted,

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James Pappas

Attorneys for Plaintiff

Judge Austin responded in a five page *Memorandum and Judgment Order* by quoting *Defendants' Post Trial Memorandum* in *four specific instances* (!): "....Since Hostrop made public the Board's grounds for discharge when it had no intention to do so itself, I find his 'standing in the community' was not damaged by the action of the Board." ("....Defendants' Post-Trial Memorandum 8-11); "....because Plaintiff deceptively deleted a material provision of his proposed employment contract and misled Defendants concerning his extensive outside involvements, I further find that he had no reasonable or 'legitimate claim of entitlement to his job.' (....See Defendants' Post-Trial Memorandum 11-16); ...."I find that the Board was prepared to undertake an informal impartial hearing into his complaints against him....Plaintiff's voluntary absence from a properly-noticed Board session constitutes a deliberate waiver of due process rights he may have possessed." (....See also Defendants' Post-Trial Memorandum 17-29."); "....Next, I find that Hostrop's dismissal was not motivated by his expression of views in the Ethnic Studies memorandum. I conclude that, as a matter of fact, his termination was fully justified and was a culmination of a series of confrontations and incidents which include the Savage and Cooke problems, the Perkins and Will affair, the timing and concealment of the Ethnic Studies memorandum, Mrs. Pommer's salary, the operation of the Storefront Academy, his unilateral contract deletion, his misinformation about his non-college activities, and his failure to provide the Board with

> requested financial reports. These events substantially impeded the Board's normal functions, critically impaired the personal working relationship between the parties, and completly destroyed the Board's confidence in Plaintiff's loyalty and abilities. Hostrop's discharge, therefore, was neither a deprivation of his free speech rights nor a breach of contract. *See Defendants' Post-Trial Memorandum.*:

In short, by Judge Austin's own admissions, as vividly shown above, he relied almost entirely on the "distortions, half-truths and outright false statements" (*Plaintiff's Post Trial Reply Memorandum* at 1) put forth in *Defendants' Post Trial Memorandum*. Nowhere did Judge Austin cite even one contravening argument by my attorneys, yet cited *all* 82 pages of Defendants' arguments as proved by the last sentence in Judge Austin's above citation.

Higher courts are *bound* by determined "facts" of lower courts. The Court of Appeals could not easily turn aside Judge Austin's rulings. That they did so at all is a credit to the Court's good legal judgment.

Two-and-one-half years after the Court of Appeals issued their opinions and order, the District Court concluded the case—March 31, 1978—nearly eight years after my discharge as President of Prairie State College.

Much of the two-and-one-half years of delay was due to the continuing tactics by Defendants. Anthony Scariano was looking for a decision that would mitigate damages for the Defendant Board. He was successful. The United States Supreme Court in a definitive decision, *Carey vs. Piphus*, ruled thusly on the issue of damages:

> The damage issue is controlled by *Hostrop v. Board of Junior College District No. 515, 523 F. 2d 569* (7th Cir. 1975), *cert. denied.* 96 S. Ct. 1748 (1976). We recognized in that case that non-punitive damages for the injury which is "inherent in the nature of the wrong" are recoverable for a violation of the right to procedural due process, as they are for the deprivation of voting rights or other constitutional rights. *Id.* at 579-580. This is so even if, as is the case at bar, there is no proof of individualized injury to the plaintiff, such as mental distress (which when found to have suffered, would enhance the

general damages recoverable), and even if no pecuniary loss is shown. The amount of damages to be awarded when no individualized injury is shown is dependent on the nature of the wrong. The amount fixed by the District Court should be neither so small as to trivialize the right nor so large as to provide a windfall...Plaintiffs have also asked for an award of actual and punitive money damages. A recent Supreme Court and several recent Seventh Circuit opinions set forth the standard for measuring whether monetary liability is appropriate. ***Wood v. Strickland,*** 95 S. Ct. 992 (1975); ***Minns v. Board of Education,*** No. 74-1534 (7th Cir. Sept. 24, 1975); ***Hostrop v. Board of Junior College Dist. No. 515,*** No. 74-1915 (7th Cir. Sept. 24, 1975). An official is immune by reason of good faith for liability for damages for a constitutional violation if he is: "acting, not with the malicious intention to cause a deprivations of constitutional rights or other injury to the [plaintiff], but 'sincerely and with a belief that he is doing right.' Second, if he meets the first test, he is liable only 'if he knew or reasonably should have known' that his act 'would violate the constitutional rights of the plaintiff "*Hostrop, supra,* Slip Op. p. 10, quoting *Wood, supra,* 95 S. Ct. at 1001.

Judge Will, taking *Carey* and *Donovan vs. Reinbold* as his particular "guiding lights" ruled: "....plaintiff apparently believed at the time that the Board's conduct was unjustified and was undoubtedly distressed at his preemptory dismissal. He probably, however, would have been equally distressed at his ultimate dismissal after a due process hearing. In any event, we find it difficult to believe that his damages resulting solely from deprivation of due process rights are greater than those suffered by Donovan in both losing his employment without justification and without due process.

"Given these considerations, a damage award of $4,000 seems in order. In terms of the court of appeals' formula, this sum should consist of $1,000 in general damages and $3,000 in special damages."

In addition to the $4,000 awarded, I also received reimbursement of all court costs throughout the eight years, amounting to about $6,000 which Defendant Board was ordered to pay. Defendants continued with their "meanness" by refusing to pay me the $4,000 awarded by the District Court for well over a year after the court order. Because of their delaying tactics, they were forced to pay me an additional $400 in interest which, ironically, I received on July 23, 1979...exactly nine years to the day of my dismissal.

The near disastrous outcome of my grievances *in court* against the Board of Trustees of Illinois Junior College District 515 can be clearly attributed to three men:

*Board Chairman Lester Kloss* who lied in Court that at the time of April 2, 1970 Board meeting he did not know about the absence of "and will devote full time to said employment" in the blank contract form, and lying that he had offered me a hearing in Scariano's office on July 13, 1970.

*Attorney Anthony Scariano* who repeatedly made distortions, put forth half-truths and false statements in his written arguments to "win at any cost."

*Judge Richard B. Austin* who refused to give me a jury trial, who ignored documented facts, the trial record, and any of my attorney's arguments in *Plaintiff's Post Trial Reply Memorandum.*

I have tried very hard to be objective, but quite naturally I look through a prism that is different from those of the Defendants. I have made an honest effort to provide as much information as possible in support of Defendants' positions via Court opinions, written documentation, actual courtroom testimony, etc. so that readers can make up their own minds about the outcomes of what has to be considered one of the more interesting educational stories to have appeared upon the American educational scene—turbulent events, a landmark case, with significant ramifications for all public administrators, managers and governing boards. I believe I had the responsibility to write this book because of these ramifications. It is my hope that in the remaining four short chapters the observations and suggestions made will be of value to administrators, managers, governing boards, and school and college attorneys.

# Chapter 24

## The Civil Rights of Administrators and Managers

After conclusion of the final actions by the District Court, I had hoped that my attorneys would pursue my claim for payment of the 49.6 days of accumulated leave and my teaching tenure status at the college codified in board policies carried over when the college was separated from the K-14 system.. They declined, believing it would be fruitless to do so. I contacted another law firm with the same results, their citing the main reason as being *res judicata* and *collateral estoppel*, a fancy way of saying the case was too old and that the teacher tenure issue should have been raised in my initial suit as one of the counts—which I believe should have been done, but my attorneys believed it would have distracted from the damages caused by my dismissal as president…but now I was left with nothing; there could have been back pay of up to nine years as a teacher had I at least prevailed on this issue.

From July 1970 until July 1979 *Hostrop* had been in various courts eight times. Counting court costs and legal fees, the cost to the taxpayers of the nation was in excess of half-a-million dollars—100 times more than what it would have cost the Board to have paid me my accumulated leave valued at $5,532.31—an amount, coupled with the six month's pay offered by the Board, which would have resulted in my resignation. The cost to the individual Board members was nothing (who got a "windfall at the expense of the taxpayers"?). The cost to my family and me transcend dollars, though it would be fair to say that in dollar terms, as of the date of this book's publication, conservatively over a million dollars in salary and benefits have been lost as of the date of this book's publication had I been able to continue in professional education as a community college president.

In this chapter I will discuss what the civil rights of administrators and managers are and what I recommend to others faced with a possible dismissal action. First, the civil rights.

What are the civil rights of administrators and managers?

1. They are entitled to due process. Specifically, a right to receive advance written charges before a dismissal, an opportunity to present and confront witnesses, and an opportunity to be heard before a tribunal of apparent impartiality.
2. They are guaranteed the right to responsibly speak out on controversial issues without fear of losing their positions.
3. They have the right to write articles and books on their own time.( No agency "owns" an employee 24 hours a day.)
4. Multi-year contracts are legal unless there are specific laws to the contrary.

Defendants in each of the above instances argued to the contrary…and lost.

There are also other outcomes in *Hostrop* which, instead of being helpful, are detrimental to those in administrative positions …and almost wipe out the rights enumerated above. Though the Court stated I had the right to write and discuss the confidential discussion memorandum of May 25, 1970 with my Cabinet, the Court said the Board was justified in dismissing me because the memorandum became public (by being released, even though without my permission or knowledge by Calvin Savage) and caused controversy and because even though for discussion purposes only I had proposed a too early implementation date.

The significance here is that an administrator can be fired for a "leaked" confidential *discussion* memo which *might* prove controversial! The implications of Judge Austin's Court decisions for those in management positions is enormous. This suggests that an administrator not ever put anything in writing which might prove controversial. The Court's decision can only result in seriously restricting First Amendment rights.

The *Hostrop* Court also has made it possible for a Board or any other superordinate to declare in a cavalier way that an administrator has "breached his/her contract," and therefore is terminated because to pay an "incompetent administrator" what is due on the contract would provide a "windfall" to the administrator "at the expense of the taxpayers."

The practical outcomes forthcoming from the *Hostrop* landmark decisions for administrators is that there is little chance for administrators to be reinstated in his or her position once he or she has been dismissed, no matter how unjust the dismissal is or was. He or she can only expect a moderate amount of money awarded by the Court (probably only about one-third of what is due on the contract, including benefits)...even if a dismissal is challenged and won, in part. Superordinates can go "through the motions" of having an "impartial hearing" and still find the manager "guilty," then proceed with dismissal no matter what the recommendation of the hearing officer might be.

It usually would be cheaper for a public body to negotiate a buy-out of a contract and/or fight a civil rights suit than proceed to legal action with its high attendant attorney and court costs. This is the negotiating power the subordinate has.

Attorneys will be very reluctant to represent administrators on a contingency basis in light of the *Hostrop* decisions.

In short, the *practical* outcome of *Hostrop* is what probably most readers of this book already know: "You can't fight city hall." If faced with a dismissal, I now believe an administrator should resign as quickly, quietly, and try to get the most money possible without a court fight...*using an attorney, on a flat-fee basis, to effect the resignation.* The *threat* of using the *Hostrop* decisions *can* give administrators some leverage in effecting a better settlement than would have been true before *Hostrop*. The superordinate will not want to go into a lengthy court case which is both time consuming and very costly in terms of legal fees and court costs. Even the Board of Prairie State College learned their lessons from *Hostrop*...at least three administrators after my departure received generous financial settlements for resigning rather than Defendants choosing to face what they chose to face with me.

As with most things, there are exceptions to the rules. But weigh very heavily the possible costs, not only monetarily, and the length of time of resolvement, but what such a turmoil can do to your family as well as to yourself. If I had to do it all over again, I would have followed the above advice given and accepted the job offer given by President Engbretson at Governor's State University. But there have been many favorable changes for administrators and managers since 1970. From what you read below, you may decide, if in a situation of "resign or be fired," you will decide on neither, but instead fight

Since *Hostrop*, there have been a number of civil rights actions taken under Section 1983 of the Civil Rights Act of 1871 by administrators. Not only has *Hostrop* paved the way for such actions but subsequent court decisions now make it possible to successfully sue superordinates as individuals as well as suing them collectively as a corporate body. Further, since *Hostrop*, a law has been enacted which requires the payment of attorney fees in civil rights cases which, in some instances, will get around the contingency fee problem for an administrator since the attorney is "guaranteed" his/her fees, no matter what the outcome of the case might be...look into this law should you decide to "sue the bastards." To broaden the scope of this book and/or to help a manager decide if he or she wishes to fight rather than resign several relevant and varied-type cases are reported below.

*Spano v. School District of Borough of Brentwood*, 316 A.2d 162 (Pa. 1974).

*Question:* What are grounds for dismissal of a school administrator?

*Facts:* The plaintiff, Spano, began work as a curriculum coordinator with the Brentwood (Pennsylvania) School District on August 1, 1966. Dissatisfied with the employee's work, the school board on November 7, 1966, asked her to resign. She refused to resign and continued working until she was suspended on April 20, 1967.

The school district levelled charges of incompetency and persistent and willful violation of the school laws. Nineteen hearing sessions were held and voluminous records compiled. The school board voted to sustain the charges and dismissed her on April 16, 1968.

The plaintiff then appealed to the state Superintendent of Public Instruction. After hearing the case, the superintendent concluded that the plaintiff was properly considered as a professional employee, the charges of incompetence against her were unjustified, but the school district was within its rights to dismiss her for persistent and willful violation of the school laws of Pennsylvania.

The plaintiff then filed an appeal with the Court of Common Pleas of Allegheny County. At the same time the school district filed a counterappeal questioning some of the findings of the state superintendent. The judge sustained the plaintiff's appeal and dismissed the school district's counterappeal, holding that the plaintiff had not been accorded a just and unbiased hearing by the local school board. The board then appealed this decision to the Supreme Court of Pennsylvania, which ordered a new hearing before the Court of Common Pleas of Allegheny County. This time the common pleas judged sustained the school board's dismissal. The plaintiff then appealed this decision to the Commonwealth Court of Pennsylvania.

*Decision:* The commonwealth court affirmed the lower court's decision sustaining the dismissal of the plaintiff.

*Commentary:* The plaintiff challenged the lower court's finding that she willfully and persistently violated state school laws. In exploring the facts, the commonwealth court found that some of the actions cited by the board as examples of the plaintiff's behavior in excess of her authority and therefore derogatory to the school district were in fact laudatory. For example, she had tutored a student, at the request of his mother, after school hours without pay. But the court found that plaintiff violated other school laws found detrimental to the school district, and that she did not comply with all aspects of her job description. Because she refused to resign, the court ruled to sustain her dismissal.

## GROUNDS FOR DISMISSING AN ADMINISTRATOR: II

*Sorin v. Board of Education*, 39 Ohio Misc. 108, 315 N.E. 2d 848 (1974).

*Question:* Can a superintendent be fired for vague, unsubstantiated charges?

*Facts:* A superintendent was fired from his position on the basis of pressure from an investigation by three of the five members of the board of education. The board clearly was split with respect to support and nonsupport of the superintendent. The superintendent alleged that the charges against him were biased and vague.

*Decision:* The Court of Common Pleas upheld the superintendent's charges. There was evidence that the three members of the board were vindictive; they investigated, prosecuted, testified against, and made a judgment against the plaintiff. There was evidence that they decided at all costs to get rid of him. Although numerous, the charges against him were so vague as not to constitute any real cause for his dismissal.

*Commentary:* In a hearing, a nonpartial tribunal is necessary whether it be a criminal court or an administrative or quasi-judicial proceeding. Moreover, there must be a substantive reason to justify the dismissal of an administrator.

In Ohio, the law provides that grounds for dismissal shall be stated with specification. Here no more than vague, generalized charges had been filed. There was no way that one could intelligently respond to them, either individually or collectively.

The superintendent was awarded back salary and attorneys' fees. He then waived his reinstatement to the position.

## DUE PROCESS

*Anderson v. Westwood Community School District*, 212 N.W. 2d 232 (Mich. 1973).

*Question:* Is a superintendent entitled to the same rights of due process as other professional employees of a school district?

*Facts:* The superintendent of the Westwood (Michigan) Community School District was under a three-year contract that began September 30, 1968. On October 8, 1968, he was notified that charges had been field against him and that he would be dismissed as superintendent.

He asked for a hearing in accordance with the Tenure of Teachers Act. The school board denied his request, claiming that he was not entitled to such a hearing.

The superintendent filed a complaint in court asking that he be given a hearing by the school board. The court ruled in favor of the superintendent and a hearing was held. The hearing resulted in the superintendent's dismissal.

Upon this action by the school board, the plaintiff filed with the court claiming that he had not been given a fair and just hearing. He claimed that not all the board members were present at the hearing meetings, that no transcript was made of the proceedings, and that witnesses on his behalf were not permitted to speak.

*Decision:* The court ruled in favor of the plaintiff and awarded him a partial summary judgment. The court based its decisions on the following arguments:

1. All the evidence was not considered by all board members.
2. The board arbitrarily terminated the hearing without giving the plaintiff an opportunity to complete his case or make an argument.
3. There was a serious question whether the board was free from bias or prejudice.
4. The defendants had not shown good and just cause for discharge of the plaintiff.

The Plaintiff was awarded $10,950 as compensation for reduced earnings. The court ruled that any employee who is wrongfully discharged is entitled to damages.

*Commentary:* The court upheld the superintendent's right to a hearing as outlined in the Tenure of Teachers Act. Although the superintendent was dismissed by the school board, the court clearly stated that administrators have a right to due process and to fair and just hearings of the charges. By declaring a violation of due process for the reasons previously stated, the courts are, in essence, mandating the following procedures for dismissal hearings:

1. The individual against whom charges are brought must have ample opportunity to present his case.

2. The school board must clearly prove that it had just cause for its action.

School administrators cannot be dismissed at the whim of school boards or individual board members. They are entitled to the same due process rights as teachers and students.

## ADMINISTRATOR TENURE

*Bryant v. Cuniff*, 301 A. 2d 84 (R.I. 1973)

*Question:* Is a principal who is a principal-administrator tenured under a state's teacher tenure act?

*Facts:* The Foster-Gloucester Regional School Committee hired Bryant as principal of Ponaganset (Rhode Island) High School effective September 1968. In July of 1969, 1970, and 1971, Bryant's contract was renewed on an annual basis. On October 14, 1971, the committee, dissatisfied with his performance, voted unanimously to terminate his services as of the close of school the following day. Bryant sought injunctive relief from a s superior court justice who, pending the filing of charges, ordered his reinstatement as principal and enjoined the committee from interfering with his employment in that position.

Charges were then filed, and public hearings before the committee followed. The committee found that the charges against Bryant had been substantiated and voted (with one member dissenting) not to renew his contract for the ensuing year.

Bryant then voluntarily discontinued action in the superior court and filed a petition to have his case heard by the Supreme Court of Rhode Island. While awaiting action on this petition, he appealed the committee's decision to the state commissioner of education. The court decided to review his petition even though his appeal had not been heard by the state commissioner.

Bryant maintained throughout his hearings that, in view of the fact that the law requires a principal to have been a certified teacher prior to his appointment as a principal, a principal is protected by teacher tenure laws.

*Decision:* The court found that Bryant was not a teacher who had administrative duties, but, instead, was a "principal-administrator who neither teaches nor engages in continuing service as a teacher. As such, his claim for tenure does not fall within the purview of the Act."

Bryant's petition for a hearing before the state commissioner was denied and the court found it unnecessary to determine whether the committee correctly concluded that the charges against Bryant were substantiated.

*Commentary:* State tenure laws vary. In some states principals fall within the purview of tenure laws. In Rhode Island, however, the pertinent law reads: "Where school principal was principal-administrator who neither taught nor engaged in continuing service as teacher, he was not tenured under Teachers' Tenure Act." It is incumbent on administrators to familiarize themselves thoroughly with the specific laws in effect in their states.

## MEMBERSHIP IN TEACHERS' ORGANIZATIONS

*Ellwood City Area School District v. Secretary of Education*, 308 A.2d 635 (Pa. 1973).

*Question:* Does membership in local, state, and national teachers' organizations render a first-level supervisor incompetent on the grounds that such membership precludes him from performing all the duties expected of him?

*Facts:* Reese, a tenured teacher for the Ellwood City (Pennsylvania) Area School District, was promoted to assistant principal in August 1971. It was known to the district prior to and at the time of the promotion that Reese was a member of various teachers' organizations. Although it was clear that the district did not approve of his membership in such organizations, he was not asked to resign nor did he promise to do so.

Reese was dismissed from his position as assistant principal sometime later on the grounds of "incompetence and negligence based entirely on the fact that he was a member of employee organizations which, the school district concluded, made him ineligible to handle grievances or to otherwise perform duties properly assignable to an Assistant High School Principal."

Reese had never received an unsatisfactory rating. He appealed, and the state secretary of education ordered the district to reinstate him. The district then appealed to the Commonwealth Court.

*Decision:* The court held that an assistant principal's membership in various teachers' organizations did not render him, as a first-level supervisor, incompetent. Such membership does not prevent an administrator from performing duties he would otherwise be expected to do.

*Commentary:* In this case, the question was clear: Does membership in a teachers' organization create a conflict of interest in an administrator's work?

Under the Pennsylvania State codes, no person who is a member of an employee's bargaining unit may participate on behalf of a public employer in the collective bargaining process, but such a person, where entitled, may vote on the ratification of an agreement. Any person violating this section may be removed by the public employer from his role, if any, in collective bargaining negotiations.

In this case the question arose whether the handling of grievances fell into the category of collective bargaining. It was resolved that if such procedures did fall into such a category, the simple remedy would be to have the person stop handling grievances. Reese had not been asked to handle grievances, nor had any other assistant principal who was *not* a member of a teachers' organization.

Had the court not affirmed the order of the secretary of education, Reese would have been dismissed for incompetence for not performing duties that were not specified in his job description, moreover, he had never been requested to perform.

The source for the above cases came from Educational Research Service in a monograph entitled: *School Administrators and the Courts: A Review of Recent Decisions* by H.C. Hudgins, Jr. Presented below are several more cases from the *Yearbook of School Law / 1973*, edited by Robert E. Phay of the National Organization on Legal Problems of Education (Topeka, Kansas).

## TRANSFER OF PROFESSIONAL PERSONNEL

(*Board of Trustees v. Briggs*, 486 S.W. 2d 829 (Tex. Civ. App. 1972).

A Texas court held for a superintendent who had been wrongfully transferred. The board, which had employed him in February to begin work July 1, dismissed him on August 6, transferring him to a teaching position, and hired a new superintendent to begin work immediately. In ruling for the dismissed superintendent, the court reasoned that the work of a teacher was quite different from that of a superintendent, and although he might be transferred to another superintendency, he could not be transferred to a teaching position.

The school board contended that it could not meet the superintendent's claim of damages because it could not legally contract for expenditures greater than its revenues. The superintendent showed, however, that on each of the dates critical to the case, the board had on hand sufficient funds to pay all money due him. The court held for the superintendent.

*Draper v. Denver School Dist. No. 1*, 175 Colo. 216, 486 P.2d 1048 (1971).

A principal in Colorado who was entitled to tenure as a teacher was transferred to a teaching position at a tenured teacher's salary because she was an unsatisfactory principal. By statute, a teacher with an administrative position "may if deemed unsatisfactory in such position be returned to regular classroom teaching at the regular salary figure to which he would have been entitled" had he not occupied the administrative position. The court found that whether the plaintiff was performing adequately as a principal or should be returned to teaching was "a matter of subjective determination of the board."

*Frank v. Arapohoe County School Dist.*, 506 P.2d 373 (Colo. 1972).

In a case that disputed whether a tenured employee could be transferred from the position of junior high school counselor in one building to that of classroom teacher in another building without formal board action, another court in Colorado held that while the board could not delegate the power to decide whether the employee was to be transferred, it could delegate administrative details as to building and room assignment—consistent with the work for which the employee was qualified. Moreover, the transfer did not constitute a demotion; therefore the employee was not entitled to a hearing before the board.

It is noteworthy that Myron Lieberman, reporting in the June 1978 issue of *The American School Board Journal*, presented "The Case Against Affording Due Process to Superintendents." Some of his more cogent points were:

"Due process for superintendents is a bad idea. The fact that it is being seriously considered shows just how little understanding of management philosophy there is in public education....Principles that are applicable to employees are not necessarily applicable to management—and even may be contrary to public policy when so applied.

"Here's an example to illustrate the point:

You've been hit by a truck or need to draw up a will or your wife has run off with the milkman. Whatever your reason, you go out and hire McDonald, Burger and King, attorneys at law. They become your legal representatives for as long as you choose" for them to be.

The time may come, however, that you want to change attorneys. If you do, "due process" is almost always irrelevant. You may want to hire your brother-in-law who just passed the bar exam and charges only $5 an hour rather than $125. Or you may not like M.B.&K.'s style, or dress, or speech. Whatever your reasons for wanting to change, except in special circumstances, you don't need to justify your decision or afford due process.

"Even if you have a contract with M.B.&K., it probably doesn't require *or* provide due process. It may contain a clause that spells out how much you have to pay to terminate the services of the firm and an understanding that you have an obligation to pay for whatever expenses have been accrued on your behalf and for any actual legal work that has been done. But you don't have to justify or explain your *decision* . I'm not suggesting you *shouldn't,* only that legally you don't *have* to.

"...I hasten to add that this example is not to encourage or condone the act of changing attorneys regardless of the circumstances. Instead, it is to stress the importance of representation—particularly the right to a representative *of your choice*. As an individual who is paying for a job or service, you cannot be forced to accept someone you do not want as your representative.

"Which leads us to the dilemma facing school board members: Why should a school board be represented by someone it doesn't want? The superintendent is its representative. And it is just as wrong to force a school board to accept an unwanted representative as it would be to force an individual to do so.

"And before superintendents call me a heretic, let me plead for understanding of my point. In my opinion, it is absolutely crucial that boards *not have the right* to break a contract. They should, however, have the right to change superintendents at any time. The contract should guarantee this right. Superintendents have a right to demand—and boards have a responsibility to provide them with—a contract that clearly states what will happen if the board wants to change superintendents. I have no problem with contracts requiring a board to pay off in full, or even more—whatever both parties agree to. Such a contract enables a board to say to its superintendent: You are doing an excellent job, but we want someone else. And for that right, the board should be willing to pay—through the nose if need be.

"Community controversies over whether a superintendent should be fired usually are devoted to the issue of competency, which is or should be irrelevant to the legal issue. Firing a superintendent may be extremely unfair; it often is. But equally unfair is a policy that forces a school board to retain a superintendent it no longer wants or thinks is best for the job.

"A contract that spells out an acceptable course of action should the board want to employ a new superintendent can deter unnecessary squabbles and cries of foul play by either party. In many cases the board's decision to replace a superintendent could cause him financial disaster. For this reason alone, it is imperative that the superintendent be provided contractual protection—but not in the form of tenure or due process. Instead, the board should guarantee the superintendent some sort of financial security to compensate for his existence at the razor's edge.

"A likely misinterpretation of my argument is that I am urging school boards to treat superintendents arbitrarily and capriciously. I am not. In fact I believe that protection against such treatment should be written into every superintendent's contract. Furthermore, if the superintendent's buy-out price is high enough, the board isn't so likely to consider it whimsically. It not only protects the superintendent, but it emphasizes the need for conscientiousness and thoroughness on the part of the board in the superintendent-selection process.

"Then there's the business of accountability. In every action it takes, especially the employment or termination of a superintendent, the board is accountable to the community. This is another reason not to limit the board's right to a representative of its choice. Is it fair to hold a school board accountable if it does not have the right to designate its representative at any time?

"In my book the more you restrict a board's right to act, the less accountability the public has a right to expect."

Myron Lieberman's comments above make valid points, not only for school superintendents but for college and university presidents as well as chief executives in other tax supported organizations. Some of Myron Lieberman's points will be addressed in the next chapter. Nevertheless, under *Hostrop*, the question of *should* school, college, and university administrators, as well as public administrators in every other field of endeavor, be given due process rights is a moot point. Indeed, administrators now enjoy these rights, without question. The only real question is *should* administrators exercise these rights? Though I have answered that question for myself, it is a question that only the individual involved can answer for himself or herself. Each individual is different. Each situation is different.

# Chapter 25

# Ways to Improve Your Chances of Leaving a Position When *You* Choose to Leave

When accepting a position as a chief executive officer, one of the first prudent things to do when moving to the new community is to obtain an attorney whose specialties are contract and constitutional law. Just as you should have a family doctor, dentist, accountant, banker, and financial planner, likewise you should have an attorney very early in your new position.

Find out, before accepting an offer of a new position, why the incumbent has left or is leaving—talk to him or her, if you can before committing yourself to the offered position. Learn all you can in advance before accepting an offer about the board, staff, and community. Look over some back issues of the local newspaper in the community library or newspaper office. Ask for a copy of the governing board's policies and procedures manual before accepting the offered position ...become thoroughly familiar with it. Talk to a nearby neighboring CEO about the position you are contemplating accepting. Walk into the new situation with our eyes wide open, not "starry-eyed," as the situation *is*, not as you would like it to be. Don't accept a "near impossible" situation. It isn't worth it to yourself nor fair to your family. The same holds true if a situation *becomes* impossible. Unless for a very exceptional reason, I cannot too strongly urge a quick resignation, under the best financial terms possible, for your own physical and mental well-being...and for that of your family's.

Assuming I was offered an attractive administrative position today, and I wanted it, I probably would *not* ask for a written contract for my first year of service. Though I would do the best job I could, I would *assume*, for all planning purposes, that I might not remain more than one year in the job. I thus would keep all my options open. This would give my superordinate a chance to appraise my work and a chance for me to appraise the situation I found myself in. Should it not be feasible to operate without a written contract that first year, I would accept a contract (preferably a one-year contract), but make the assumption that the first year was a probationary period for me...*and* for my board. But whenever a written contract was asked for by either party, a *negotiated* contract would emerge. The board would be asked to spell out in *draft form* what it was offering and what would precisely be expected of me in terms of *measurable results*. I would then decide what, if any, changes I wanted in the draft offer and terms. In *draft form, with the assistance of my attorney*, I would submit to my board an incorporation of all acceptable conditions the board offered, plus any other terms and conditions I wanted. I would insist that not only the board but *their* attorney review the proposed terms before any signing occurred. The two conditions in the contract I would particularly be looking for would be fringe benefits and buy-out conditions should termination or resignation occur. Generous life-insurance, business expenses, paying health, dental, vision and life-insurance premiums, retirement annuity, organizational membership[s, a car or car expenses, housing and business entertainment allowances, etc. paid by the board make it possible to keep a lower profile by having a lower actual salary —but coming out ahead financially in the end. The buy-out conditions of the contract would be crystal clear and made legally air-tight so that in case of a forced resignation all contractual obligations would be fairly met. A model contract of employment form is shown below.

## A MODEL CONTRACT OF EMPLOYMENT

_____ADMINISTRATOR_______, hereinafter termed the administrator, and __EMPLOYER__, hereinafter termed the employer, hereby agree that said administrator shall be employed in the position of __POSITION__beginning __DATE__ for a term of _____year(s) ending__DATE__, subject to all applicable state laws. In consideration of the services rendered by the administrator, the employer agrees to pay said administrator an annual salary of__SALARY__, payable in ___ installments. Assignment and salary are subject to review and revision by the employer.

The following provisions are made a part of this agreement:

(1. Contract renewal policy)
(2. Provisions for termination of contract)
  (a. Notification policy)
  (b. Hearing policy)
  (c. Appeal policy)
  (d. Payment policy)
(3. Employer's responsibilities to the administrator)
  (a. Leave policy)
  (b. Vacation policy)
  (c. Insurance provisions—life, health, dental, vision, retirement, coverage for family, etc.
  (d. Transportation provisions
  (e. Business expenses
  (f. Expenses borne by the employer)
(4. Administrator's responsibilities to the employer)
  (a. Requirements)
  (b. Restrictions)
(5. Additional provisions)

_____DATE_____

ADMINISTRATOR __EMPLOYER REPRESENTATIVE__

The preceding contract, in its final form, would be one agreed to by the respective attorneys as well as by the board and the chief executive officer.

A contract between a board of trustees and a college or university president or a superintendent of schools is an educational instrument that can enhance the relationship between the parties. Ideally, the contract sets forth the conditions of employment and the duties and responsibilities to which both parties agree. It is not possible to develop *one* model contract with universal applicability. The one preceding and the one that follows are provided here just as an aide in developing your own contract with your board. Meaningful contracts should accurately reflect the unique desires of your organization and its constituents and contain the terms agreed to by both parties, and, of course, must be in accordance with state statutes.

CEO's are not inclined to realistically protect their contractual interests. Thus, as previously stated, it is highly desirable for the CEO to retain his/her own legal counsel when entering into a contract. The attorney for the board of trustees should not be expected, nor should he/she be asked, to represent both contractual parties.

The next sample contract that follows was prepared by the American Association of School Administrators under the auspices of Paul B. Salmon, *Executive Secretary, AASA* and William J. Ellena, *Deputy Executive Secretary, AASA*. It, like the previous one, is intended to be illustrative and suggestive of the kinds of items that should be included in a carefully prepared contract. Both are working guides only, and some sections must be deleted and others added or revised to accomodate varying state codes and local conditions.

In preparing the sample contract that follows, AASA communicated with numerous attorneys, dozens of superintendents of schools, and many members of boards of education in an attempt to identify significant characteristics of outstanding contracts. The sample contract that evolved was reviewed and revised by superintendents of schools from New York to California and from Maine to Texas. It is presented in the hope

# The Superintendent's Contract
## A Working Guide

*It is hereby agreed by and between the Board of Education of the ________ School District No. ________ located in ________ County in the State of ________ (hereinafter called the Board) and ________ (name of employee) (hereinafter called the Superintendent) that the said Board in accordance with its action as found in the minutes of the meeting held on the ____ day of ________ 19 ____ has and does hereby employ the said ________ (name of employee) as Superintendent for a ________ year period commencing ________, 19 ____. Both parties agree that said employee shall perform the duties of the Superintendent in and for the public schools in said district as prescribed by the laws of the State of ________ and by the rules and regulations made thereunder by the Board of said District.*

### Witnesseth

*1. In consideration of a salary of $ ________ to be paid the first year, $ ________ to be paid the second year, $ ________ to be paid the third year, and . . . . . . said Superintendent agrees to perform faithfully the duties of Superintendent and to serve as Executive Officer of the Board. The annual salary shall be paid in equal installments in accordance with the rules of the Board governing payment of other professional staff members in the District.*

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**that it will provide the basis for intelligent discussion and improved academic administration.**

2. The Board hereby retains the right to adjust the annual salary of the Superintendent during the term of his contract, said salary adjustment not to reduce the annual salary below the figures stated above unless such decrease is part of a uniform plan affecting salaries of all employees of the school district. Any adjustment in salary made during the life of this contract shall be in the form of an amendment and shall become a part of this contract, but it shall not be considered that the Board has entered into a new contract with the Superintendent nor that the termination date of the existing contract has been extended. The Board may by specific action extend the termination date of the existing contract.

3. Throughout the term of this contract the Superintendent shall be subject to discharge for good and just causes, said causes to be given to the Superintendent in writing at the time the contract becomes effective, provided, however, that the Board does not arbitrarily or capriciously call for his dismissal and that the Superintendent shall have the right to written charges, notice of hearing, and a fair hearing before the Board. If the Superintendent chooses to be accompanied by legal counsel at the hearing, he will assume the cost of his legal expenses.

4. The Superintendent shall furnish throughout the life of this contract a valid and appropriate certificate as defined in ______________ to act as Superintendent in the State of ______________ as directed by the Board and that the Superintendent hereby agrees to devote his time, skill, labor, and attention to said employment during the term of his contract, provided, however, that the Superintendent, by agreement with the Board, may undertake consultative work, speaking engagements, writing, lecturing, or other professional duties and obligations.

5. The Superintendent will have complete freedom to organize, reorganize, and arrange the administrative and supervisory staff, including instruction and business affairs, which in his judgment best serves the ______________ Public Schools. The responsibility for selection, placement, and transfer of personnel shall be vested in the Superintendent subject to approval by the Board; and the Board, individually and collectively, will refer promptly all criticisms, complaints, and suggestions called to its attention to the Superintendent for study and recommendation.

6. Should the Superintendent be unable to perform any or all of his duties by reason of illness, accident, or other cause beyond his control and said disability exists for a period of more than ________________ during any school year, the Board may in its discretion make a proportionate deduction from the salary stipulated, and if such disability continues for more than ________________ or if said disability is permanent, irreparable, or of such nature as, in the discretion of the Board will make the performance of his duties impossible, the Board may, at its option, terminate this agreement, whereupon the respective duties, rights, and obligations hereof shall terminate.

7. The Superintendent does hereby agree to have a comprehensive medical examination once each year; that a statement certifying to the physical competency of the Superintendent shall be filed with the clerk or secretary of the Board and treated as confidential information by the Board, cost of said medical examination to be borne by the District.

8. The Board shall provide the Superintendent with transportation required in the performance of his official duties during his employment under this contract or shall provide him with $________ annually in lieu of transportation or mileage at the rate of ________ ¢ per mile.

9. The Board shall provide the Superintendent with periodic opportunities to discuss Superintendent-Board relationships and shall inform him, at least annually, of any inadequacies as perceived by the Board.

10. The Superintendent shall receive ________________ days of vacation annually exclusive of legal holidays and shall be entitled to ________________ days of sick leave annually. Vacation shall be taken within 12 months of the year in which it is earned. Earned sick leave shall be cumulative or as provided by state law or Board rules or regulations.

11. The Board at the request of the Superintendent and in accordance with state law shall withhold and transfer an amount of salary annually or semi-annually or monthly, said amount to be determined by the Superintendent, permitting the Superintendent to participate, if he so desires, in a tax-deferred annuity program of his choosing.

*12. The Superintendent shall attend appropriate professional meetings at the local, state, and national level, the expenses of said attendance to be incurred by the District. The Board expects the Superintendent to continue his professional development and expects him to participate in relevant learning experiences. The Superintendent shall file an itemized expense statement with the Clerk.*

*13. The Board shall reimburse the Superintendent for expenses incurred in moving his family, furniture, household goods, and related personal belongings from ____________ to ____________, said expenses not to exceed $____________.*

*14. Failure to notify the Superintendent in writing, on or before the ______ day of ____________ of the year in which this contract will be terminated, of the Board's intent not to renew the contract will automatically result in a one-year extension of the contract.*

*15. The Superintendent shall receive life and health insurance coverage, terminal pay, and other personal benefits accorded to other professional employees of the District. Any improvements in fringe benefits as may be developed through bargaining or provided on any other basis to teachers will automatically apply to the Superintendent.*

*16. The Superintendent shall fulfill all aspects of this contract, any exception thereto being by mutual written consent of the Board and the Superintendent. Failure to fulfill the obligations agreed to in this contract will be viewed as a violation of the administrators' Code of Ethics, will be good and just cause for discharge as noted above, and will be reported by the Board to the appropriate state educational authorities and State and National Associations of School Administrators.*

*Dated this ____________ day of ____________, 19____.*

______________________________
(President or Chairman, Board of Education)

______________________________
(Secretary or Clerk, Board of Education)

______________________________
(Superintendent)

# Action Amending Employment Agreement By and Between Board of Education and Superintendent

*This is to certify that the employment contract entered into by and between the Board of Education of ____________ School District No. ________ located in ____________ County in the State of __________ and ______________________ on ____________, 19____, effective*

(name of employee)

*____________, 19____, is hereby amended by action taken by the Board at its regular meeting of ____________, 19____; in accordance with authority contained in said employment agreement and commencing on ____________, 19____, and continuing thereafter during the term of said employment agreement, the annual salary for the Superintendent of Schools shall be $ ____________.*

______________________________
(President or Chairman, Board of Education)

______________________________
(Secretary or Clerk, Board of Education)

______________________________
(Superintendent)

Though the Salmon and Ellena "Working Guide" presented above is excellent in most respects, under Item 3 of the Superintendent's Contract, instead of having the Board serve as a hearing body, I would insist that a "tribunal of apparent impartiality" conduct the hearing (under *Hostrop*, ***only*** an "impartial" kind of hearing is constitutionally acceptable). Also, very specific buy-out terms should be clearly and specifically enumerated in the contract in case it is terminated "for cause."

As can be understood from the foregoing, the key to ways to improve your chances of leaving a position when *you* choose to leave, is advance preparation when the relationship between one's self and one's board is an excellent one. A well-written contract could have avoided the situation that occurred at Prairie State College. Note below the Prairie State College contract and contrast it with the provisions enumerated in the model contracts shown above. Is it any wonder that litigation occurred when the Board "summarily" dismissed me, and that I never received the accumulated leave money to which I was entitled? As I openly confess, I did not follow the advice I am now giving, much to my regret and naivete at the time. The Board's attorney prepared it—I signed it without much thought nor did I ever consult with an attorney before signing it.

## CONTRACT

THIS AGREEMENT, entered into this 2nd day of April, 1970, by and between THE BOARD OF ILLINOIS JUNIOR COLLEGE NO. 515, Counties of Cook and Will and State of Illinois, hereinafter referred to as "the Board, and RICHARD W. HOSTROP, hereinafter referred to as "Hostrop."

WITNESSETH:

In consideration of the undertakings hereinafter made, the parties hereto agree as follows:

1. The Board does hereby agree to employ Hostrop as President of the College maintained by said Board for the year beginning July 1, 1970 and ending June 30, 1972.

2. Hostrop agrees to abide by all rules, regulations and directions issued by the Board in carrying out the duties of his position. [and will devote full time to said employment.]*

3. The Board does agree to pay Hostrop the sum of $29,000 for the period July 1, 1970 - June 30, 1971, payable in 24 equal installments minus withholdings as required by law, the first payment becoming due July 15, 1970.

4. The Board does agree to pay Hostrop not less than $32,000 annually for the period July 1, 1971 to the expiration of this contract, payable in a like manner as 3 above.

5. The Board further agrees to the following additional benefits: As per previous contract.

IN WITNESS WHEREOF, the parties hereto cause this contract to be executed the day and year first above written.

BOARD OF ILLINOIS JUNIOR
COLLEGE NO. 515, Cook and
Will Counties, State of Illinois

By Lester Kloss
Chairman

Shirley Mellecker

Richard W. Hostrop

*This was the clause I deleted in this contract from the previous one, for which I have previously explained the situation of my secretary, Meredith Pommer, asking if I wished to make any changes, and with little thought, I removed as being superfluous because of the Board's own Policies and Procedures detailing the President's duties and time requirements, and because of precedence in the "Townsend Matter." And, as reported earlier, Lester Kloss acknowledged to me by telephone, and in which my wife was present to hear my end of the conversation, and which we afterwards discussed Kloss' comments on the matter, he was aware of the deletion but did not think it important enough to bring the matter up with fellow Board members when discussing the contract. Had it been brought up at the time or even any time afterwards, I would have immediately agreed to include the superfluous statement—I was averaging well over 50 hours a week devoted exclusively to College matters—what more could I give?

At any rate, this is the contract that Judge Austin said was not breached by the Board. It had great deficiencies as can be seen from previous sample contracts and discussion in this chapter. Be wise. Learn from my unhappy experience. Get your own attorney to protect your interests as much as the Board uses their attorney to look out for their interests.

Assuming at some later point in time that there is a rapid changeover in board membership, and as a result the new board wants to "fire the old chief" so as to bring in a "new chief, " have a negotiated contract that will stand up in any court of law. Should there be any difficulties in honoring the contract's terms, *immediately* bring in your own attorney, an attorney who possesses two superior skills: contract law and civil rights (Constitutional) law. However, there should be little difficulty with a contract that has been approved not only by oneself and one's attorney, but also by the governing board and *their* attorney. It should then be merely a matter of expeditiously carrying out the terms of a due process hearing (if you *really* want to put your family and yourself through that "chamber of horrors") or carrying out the buy-out terms which should be very generous terms (e.g., payments due per the contract until the contract expires, *plus* six months pay on the same terms unless and until such time as a new position is secured...*and* the *difference* in pay for that period of time should the new position pay less than the current one). You may not be able to get the buy-out terms just proposed, but these are precisely the ones you should strive to negotiate, which are not all unreasonable.

It cannot be stressed too strongly that the time to get the kind of model contracts reproduced and discussed above is when the board wants your continued services as much as you wish to remain in your current position...and that is *early* in your tenure. You need not be afraid to negotiate and to have your attorney assist you. It is a *must* if you are to provide some safeguards for your professional career...and for the well-being of your family. As an administrator, particularly a chief administrator, you are extremely vulnerable to internal and external political forces.

The above brings one to a very important point. One should never aspire to a chief executive position where there is a governing board without first squarely answering the question, Can I be a good politician and be happy doing so above all other consideratons? Make no mistake about it, chief executives in public bodies must foremost be "political animals." If the answer is "No," then do not aspire to that lonely and vulnerable position. The prestige of the position is not nearly so great as one an the outside looking at it might think. The power is far less than an outsider realizes. The hours are long. The work done is seldom appreciated by anyone—there is very little "psychological or emotional income." There is tremendous stress. Still, the work of a chief executive in public and academic employment can at times be very intrinsically satisfying and the pay and benefits are good.

For administrators and managers, other than the chief administrative officer, there usually are policies and procedures covering employment conditions. If not, work to have protective policies and procedures implemented, along with the job description. Second and perhaps third level administrators (vice-presidents, deans, associate superintendents, assistant superintendents, etc.) should also have written contracts per the above model contracts. Individuals at these levels can have their careers nipped in the bud if not protected by adequate policies and procedures or by a properly drawn-up, written and signed contract.

There are certain "rules" that can be relied upon as "warning signs" that it is time to move on. This was referred to earlier as "Firing the Old Chief, Hiring a New Chief." Many boards *love* to play this game (just look around your area and note the number of turnovers in superintendents and college and university presidents). The game begins ***when the majority of the board who employed you goes off the board for one reason or the other. The faster the changeover, the faster the CEO is likely to be replaced.*** The first year I was at Prairie State College was by far my best year…all seven board members who hired me were on the Board from July 1, 1967 when I began my employment there until April 1968 when there was the annual Board election. My second year only two of the original seven members continued on the Board. My third year, only one original Board member remained—Dr. Dale Collins who was the Board Chairperson when I was hired. In my fourth year, Dr. Collins retired. Of the seven Board members, *all* from Chicago heights who had employed me, not one member now remained from the largest town in the college district. Beginning my fourth year, I had all new Board members—in less than three years there had been 21 board members! These new, inexperienced trustees, were eager to "play the game"—to get rid of the "incompetent" that the "Chicago Heights bunch" had employed —notwithstanding the fact that three months earlier I had been reaffirmed for a fourth year, with a new 2-year contract and a $3,000 raise. In short, start looking—FAST—when the majority of the board turns over…particularly if rapidly done so. If the reader will carefully consider my thesis, I believe she or he will be able to recall at least several instances that bears this thesis out. I personally know of seven instances in which the CEO had to leave within two years when a new majority took control of the board.

When a new chief executive officer comes on the scene, those in number two or three positions must also carefully analyze how secure their own position remains. Frequently, a new CEO wants to bring several former colleagues with him or her to place in key positions—this can be legitimately threatening to those present subordinates. The best way to forestall such action is to show loyalty to the new superordinate. However, the subordinate seldom can withstand being replaced if the superordinate is determined to make an administrative change. But those changes will first be made against those whom the superordinate feels is a serious challenge to his or her authority. If in a position just below that of the new person hired, then consider looking for a new position, particularly if you applied for the position just above you and didn't get it—you are in a very vulnerable position. If you didn't apply for the job just above yours, and you are happy in your present position, let the new superordinate know that you did not apply for his or her job and that you are very happy in your present position, and that the new superordinate can rely on you to help him or her to succeed—this will give you long staying power in the present position.

Frequently, a CEO will want to hire her or his own secretary—this is usually wise—particularly if the secretary had a particularly close relationship with her or his former boss. ***Never*** have your secretary serve as a recorder for the board! Her/his loyalty will be divided...and in a "crunch," it will be you who will be abandoned.

I believe I might have been able to have forestalled the July 23, 1970 "massacre" for another two years had I been Machiavellian, more political. In retrospect, I should have given Raymond Lindstrand a minor administrative position—he had been an administrative intern at the college and when not given an administrative position upon completion of the internship (although I did try to get him a position in another Illinois community college) demonstrated great hostility toward me and his fellow intern, Richard Jensen, whom I brought into the administration as my able assistant. Lindstrand went on to form on campus the extremely militant AFT Union (three strikes in four years) at the college and became its de facto head. Lindstrand manipulated and orchestrated a number of disastrous events at the college to its great detriment. Had I coopted him into the administration, I likely would have been able to leave the college in the five years I had intended to spend there instead of a little over three years I was there. The formation of the

Union might not have ever occurred, or at least been delayed, and the infamous Benjamin Cooke would never have been hired. I recommend, given the political realties of being a chief executive, to coop such individuals as Lindstrand by making great effort to find such an individual a job elsewhere, but if not successful in doing so, find a minor administrative position within the organization. This recommendation is *not* made so much for one's own survival, though it helps, but for preventing or mitigating the damage that such individuals can cause an organization.

This chapter has particularly pointed out that preparation, prevention, and anticipation are the best tools for having a long career in one's chosen profession. An excellent contract, developed in conjunction with a competent attorney, is the single best action to take for a long lasting career.

Staying in one state, if without portable retirement benefits, gives more flexibility as to the length of time to remain in a job that might become unsatisfactory. Changing jobs within a state provides automatic, portable retirement benefits (and often sick leave carry-over as well). Moreover, a network of colleagues and friends can be better developed over the years when remaining in one state. When heading up a new staff within the state of your career, you will not be considered an "outsider." This was a real obstacle for me, as an "outsider" coming from California to head up at first what was an all-Illinois staff. Friends can be better developed and maintained when having a career in one state; often family is in the state where one begins one's career as well, another plus for those on good terms with one's family. In short, I believe one's quality of life is much better when limiting one's professional career to one state. I had two early opportunities for community college presidencies in California—I wish I had accepted one of them. I did not do so because, at first, I was enamored with the idea of having major participation in building an entirely new campus—22 million dollars in 1967 was a lot of money. Later, I put what I thought was in the best interests of the college ahead of my own personal desire to return to California—I felt honor bound to fulfill the terms of my contract! How naive I was! There is no such thing as an indispensable person. Boards can dismiss at will and do so, so a CEO should not feel honor-bound if a more attractive opportunity becomes available. My summary firing in late July precluded my ever being able to get another first or second level community college position.

Cooping the opposition is politically realistic. Encouraging any *resentful* inherited "ambitious" subordinate to look elsewhere for a position is politically wise for the good of the organization *and* even for one's own survival. As proved at Prairie State and elsewhere, many organizations have a resident Brutus. To reemphasize, begin to seriously consider and look for a new position when the board that hired you is no longer in the majority—particularly if the changeover is a rapid one.

# Chapter 26

# What To Do If faced With A Dismissal

If an administrator is in a "resignation…or else (!)" situation, without the protection of a contract and/or pertinent personnel policies…or such protective measures are being breached, an attorney should immediately be brought into the situation. In fact, as previously suggested, one of the first things to do when relocating to a new position, is to find the best combined contract and civil rights specialist attorney in your new area and make him/her your attorney from the very beginning of your new position. It is extremely important that an attorney with this kind of specialization, experience, and ability be brought in at the very first signs of any personal difficulty with one's superordinate(s) if one is to come out of the situation in the least scathed personal and financial condition. The attorney you select for this purpose probably will not be the same one you will want to use for other matters—e.g., trusts, wills, family matters that require another legal specialty.

If you find yourself in an unpleasant situation, bring along a copy of your contract to show to your attorney (although your attorney should have a copy in his/her file), a contract that your attorney should have had a part in negotiating and preparing on your behalf, along with the board and its attorney. Discuss the contract's terms in detail with your attorney and have him/her take all measures necessary to have it enforced…including obtaining a court injunction, if necessary, to prevent your termination before you are afforded due process procedures if that process is what you choose to do (though, again, I strongly recommend a resignation with the best negotiated settlement possible except under the most egregious settlement offer by a board). Do *everything* possible to ward off any dismissal action. If you leave a current position, you *only* want it on your terms ...a resignation... under the best financial and professional standing terms possible (***including a good letter of recommendation!***) If you permit yourself to be "fired," the chances are excellent that you will never again enjoy a position of the same status in your profession as the one in which you were "fired." Resign. *Only* fight if you believe your dismissal was not only unjustified but that the terms of termination in your contract are *grossly* ignored, and that you were not given a chance *at all* to resign.

Try to reach an equitable out-of-court settlement, via your attorney, per the buy-out provisions that should have been included in your contract at the time you were first employed (it can be pointed out that "boards can turn over" in putting in such a provision upon your initial employment). Be sure that you are also paid for any accumulated leave that you have not used...or go on "vacation" until the leave is used up, followed by a resignation effective at the end of the used up leave.

Contact your professional placement director and mentor as soon as you detect any difficulty in your present position ... and keep them apprised of any significant developments. Ask for their assistance in relocating as soon as you detect any serious difficulties. The time to seek a new position is *before* any difficulties *publicly* surface. The "difficulty" will not surface if you "beat the superordinate to the punch," by resigning to accept another position before being forced to do so. It is much better for you, your family, and the organization you are leaving to move on before being asked to do so.

Do not let such issues as your sense of loyalty to the organization or retirement considerations deter you from resigning. The organization does *not* take such matters into consideration concerning you or your family. When a board or even a professional superordinate wants you to go, you go at their timing and pleasure, not yours. As has previously been mentioned, for almost all administrators it is much better to remain in one's own favorite state for one's professional career. In that way, should a change of employment occur, retirement benefits will be accumulated from one position within the state to another. Going out of state can result in a situation where either no vested retirement benefits will accrue (only refunds of contributions) or the pension will be minimal. Most states require at least five years of employment within the state to have a pension vested interest. It can be a sad situation at age 60, 62, or 65 to have little or no pension except what one has acquired through IRA's and/or 403Bs.

In personal terms, it proved a disastrous mistake for me and my family to have challenged the Board. I was offered $14,500 for a resignation. In 1970 I was also simultaneously offered a starting salary at Governors State University of $25,000 as Director of the Media Center. Governors State University proved to be the only job offer I received in education for the next nine years. My wife and I had false expectations and hopes as to the ultimate outcome of the case. We naively expected reinstatement as President and to receive back pay and allowances. We talked continually about the "unjustness and "meanness of the Board members...and the college union president and his cohorts...and of Cooke and his cohorts. This "poison" was neither mentally healthy for my wife or me nor for our two pre-teen daughters...the dismissal could not have come at a worse time in our lives... I was in my prime, just 45 years old at the time. Even though our life today could not be better, our present good life is not worth the emotional trauma we went through those first years after the dismissal...and we are still not totally through it even today...nor will we ever be. It was the one great injustice of our lives...one that totally altered our lives.

In the 1970 meeting in Springfield, Illinois, with nearly a dozen community college presidents present, *each* confessed that at one time or another they had been asked to resign and had done so. They gave me a "bravo" for fighting for what I considered an unjust dismissal. But none offered any financial or investigative support. Yet, they were right and I was wrong. I was obviously naive. I did not comprehend as my colleagues did that a chief executive must be a politician before being an educator. They all agreed that the "name of the game" for a chief executive was "survival." I thought, "right made might."

When I embarked on my quest for "fair play" by the Board, I had no idea that I was ploughing new ground. I had no idea at the time that I was first administrator in our nation's history to challenge a dismissal action in federal courts on Constitutional grounds (First, Fifth, and Fourteenth Amendments). It was not my deliberate intention to become a flag bearer or a martyr. I knew of dozens of cases concerning Constitutional issues which involved students, teachers, and other public employees. I just assumed such was the case for administrators, including school superintendents, college and university presidents...so did the respective attorneys and Judge Austin. We were all wrong. New ground was broken in *Hostrop*. I became a legal landmark by my naivete concerning the political realities of challenging a governing public body. "You can't beat city hall"—But thanks to my naivete, administrators *can* fight city hall...and sometimes even win.

As previously stated several times in this book, if I had to do it all over again I would have accepted the six month's pay and gone to Governors State University. The stress at the time was so great that I had to seek medical help for large red splotches all over my body. It was not worth the physical and mental pressures endured.

My attorneys also made some mistakes. I should have been told more forcefully by them that my chance for reinstatement to the college as president was practically nil—only monetary damages are awarded in such situations. I would have then returned to California to start anew rather than having remained in Illinois for six years after my dismissal in the false hope that I would one day be reinstated. Jim Pappas, my first attorney, should certainly have asked for a jury trial from the *outset* of the litigation. To have my fate left in the hands, of one person, Judge Austin, could not have been a worse fate. Wayne Giampietro should have included my teaching tenure status as one of the counts but chose not to do so in order not to "cloud the issue" on my presidential reinstatement claim; still the claim could have been worded in such a way as not to have jeopardized my presidential reinstatement claim—as fall-back insurance; the absence of this claim was very costly to me—six years of high faculty pay. But my attorneys' arguments were superb both in briefs and in oral arguments...moreover, they were charting new waters with unpredictable results. My attorneys weren't perfect. But who is?

I made my share of mistakes, too. I was naive politically at the college. I moved too fast in having policies and procedures established. I brought too many new people too soon from outside Illinois. I wasn't enough of a "father figure" for some faculty members—asking about their wives and children, etc.

Though certainly not premeditated nor more than a passing thought given to it at the time, I should have presented an entire blank contract form to the Board at the April 1970 Board meeting. In retrospect I can understand that the words "...and will devote full time to said employment" did legitimately *appear* as "deceitful" and "willful deception" to some Board members. I truly regret this error in judgment. In mitigation, though, I must restate that Board members had the proposed contract form in their hands at least four days in advance of the April 1970 Board meeting. At least two Board members (Dale Collins and Lester Kloss) knew the words were not included in the form and did not believe it so significant as to bring it up with me or among themselves at the meeting. Had I been invited to attend any part of the executive session to consider my contract, and if the deletion had been brought up, I would not have hesitated to have it reinstated even though Board policy clearly stated that "full time" for administrators meant "...not less than 40 hours per week"...and I gave at least 50 hours a week to college responsibilities. Moreover, how serious was this *really* to the Board; they chose not to have a contract at all with my successor, Ashley Johnson. Therefore, it seems that the Board deliberately made a mountain out of mole hill. Had I ever been given a chance to respond to the concerns of Board members at the scheduled June workshop, subsequently reset to July 6...and then cancelled without explanation...I believe I could have more than adequately responded to the deletion and other concerns. However, even the appearance of deception is not something I am proud of. That is a scenario I wish I could redo.

But the biggest mistake of all I made was leaving California to go to Illinois in the first place...to head up a college which had grown out of a high school...a high school faculty that was just beginning to learn what a *college* faculty is supposed to be. This faculty had no say whatsoever in deciding who their president was to be. They resented the hiring Board for this and, quite naturally, took it out on the "outsider." But in historical perspective it must be remembered that in 1967 there were few boards of trustees anywhere in the country that included faculty or students in the presidential screening and/or selection process.

To again repeat, I must say with all candor that if I were ever faced with a dismissal action again, I would definitely resign. I would use my attorney for the sole purpose of enforcing my contract and/or negotiating the best financial and personal settlement I could make...but in the end I would resign. The trauma to one's life and one's family is not worth trying to remain in a position for the sake of a principle. Fate made my case a landmark case...I did not seek to be a civil rights pioneer. A good attorney can demonstrate to most boards that to do the fair thing is in their enlightened self-interest. Most school/college/university attorneys are very much aware of *Hostrop*...and of the great cost incurred by the taxpayers of Illinois Junior College District 515 in litigating a matter that should never have been necessary in the first place. All one would have to do is remind one's attorney of the *Hostrop* case. That should be sufficient leverage by one's attorney to make all but the most egregious, vindictive board or professional superordinate come to reasonable terms. What reasonable college or school district or city government would want to spend from the public tax till more than $100,000 in legal costs alone...and spend nine years in litigation on one individual? I wasn't worth it. Nor is anyone else.

Thomas J. Flygare, an attorney, put it well in the June 1976 issue of *the Kappan* in an article titled, "The Wheels of Justice Turn Slowly for Richard Hostrop":

> I have no idea which side in this dispute is right or wrong, if indeed those labels are appropriate at all. And I have no idea if intransigence on one or both sides prevented the settlement of the case before court action was initiated. But the *Hostrop* case is a prime example of a situation where litigation turns both parties into losers. If Hostrop ever collects any money from the board in this case, it probably won't be enough to cover his legal fees. The college board, at taxpayers expense,

has fought the legal battle every inch of the way, including two appeals to the U.S. Supreme Court. The board's legal fees may ultimately exceed the cost of buying up the balance of Hostrop's contract in 1970. One wonders why cooler heads didn't prevail years ago to prevent this costly, time-consuming, and largely futile lawsuit. The longer the dispute simmered without resolution, the more rigid positions became, until amicable settlement was out of the question. Now, neither side will settle for anything less than full vindication of its position. This unfortunate case reaffirms the need for those involved in educational decision making—administrators, board members, lawyers—to stress tolerance and conflict resolution above arrogance and intransigence. This will not eliminate all lawsuits, of course, but it might lead to more and better solutions through negotiation in place of frequently barren results of litigation.

Since I had most of my retirement credit in California, had I to do it all over again I would never have gone to Illinois. I held on longer than I should have in Illinois in order to get five years credit in the state to qualify for minimum retirement benefits. Had I been faced with the same situation in California as I was faced with in Illinois, it would have been much easier to have left since the three years at the college would have been added on to the eight years I already had vested in the California STRS (State Teachers Retirement System). Thus, unless retirement is portable from state-to-state, I believe it much better to have all of one's professional career credited to one retirement system

Do not feel disheartened if faced with a "resign or be fired" demand...more often than not, you have done an excellent job...like a losing coach, boards deal in symbolisms...a replacement will make a "losing" organization into a "winning" one...*you* will be the winner in your next job...until *that* board turns over the majority of its members that hired you...The hardest question of all to answer is left for last...do you *really* want to be an administrator...or remain one?

In reviewing my 35 years in professional education, if I had to do it all over again, I believe being a professor or a teacher *combined* with the ownership of an outside business to be the best of all possible worlds. That would have been the best answer for me.

I am proud of the contributions I have made to education from the elementary school through the university levels, but my family and I paid too high a price for the results received in the administration arena.

## Chapter 27

# Rights and Responsibilities of Administrators

According to an article in *PARADE*, about ten percent of all college presidencies become vacant each year. The tenure for a college president is now about three years. For school superintendents, a little over two years is now about the average tenure in office and about 18 percent of all superintendencies become available each year. Oftentimes what happens is simply a game of "musical chairs," a rotation among administrators vying for each other's vacated positions.

John Gardner, in a keynote inaugural address for a new president of Stanford University, said of the job of an academic president:

> We have now proven beyond reasonable argument that a university community can make life unlivable for a president. We make him the scapegoat for every failure of the institution, every failure of society. We can fight so savagely among ourselves that he is clawed to pieces in the process. We have yet to prove that we can provide the kind of atmosphere in which a good man can survive.

According to an article in *Time*, in resigning from their presidencies, eight men "all agreed that the pressures on campus presidents are too much for one man to bear for long." Franklin

Murphy, formerly of UCLA, said, "The job is a physical, emotional and creative drain." Henry King Stanford, formerly of Miami, states in an article, "A man comes into the presidency like a bride: everybody's cheering him, the honeymoon is on. Then he reaches the burnt-toast stage in romance as he has to make decisions and people become disaffected." Mrs. Stanford wryly commented, "The only people who should be university presidents are the friendless, the orphaned, and bachelors." Robert J. Wert, formerly of Mills, said, "You have to be something of a politician and no academic can take too much of that." And William Pearson Tolley, formerly of Syracuse, said, "If I did it again, I would be a professor, not a college president; professors have the best of both worlds—they can do what they want and they don't have to do what they don't want."

The August 3, 1970 issue of *U.S. News and World Report* gave an excellent historical perspective of academic administration during the time of my tenure as President of Prairie State College:

> The wear and tear of academic life in 1970 is driving college presidents out of their jobs in numbers that educators view as "alarming."
>
> All over the country, heads of colleges and universities are deciding they have had enough of the student revolt and its attendant troubles.
>
> These administrators are quitting by the dozens and heading for more peaceful occupations.
>
> Good replacements are getting harder to find and harder to keep in the face of mounting campus pressures. There is also a shortage of competent administrative deans.
>
> According to figures compiled by the American Council on Education, the annual turnover in college presidencies has jumped nearly 80 percent in the past three years.
>
> Running a university these days is being described as "the loneliest job in the world." Presidents are reported to feel they are an unorganized group and without allies.

> On one side they are faced with "liberal faculties, militant students and the threat of more rioting.
>
> Some college heads are quitting because of sheer exhaustion. In many other cases, however, the deciding factor seems to be concern for the safety of themselves and their families.
>
> Residences of college presidents have been picketed, stoned and threatened with bombing. Frequently their offices have been broken into and ransacked. [Some presidents] have found it advisable to employ bodyguards.[One retiring president] keeps fire extinguishers on every floor of his house—"just in case."...telephone calls "of the most vicious type....
>
> Kenneth S. Pitzer, formerly president of Stanford University, resigned after having to call police 13 times in one month. During student demonstrations, windows to his office were smashed, his house painted with slogans and he himself doused with paint.
>
> Commenting on the continuing exodus of college presidents, Allan W. Ostar, formerly executive director of the American Association of State Colleges and Universities said, they were leaving "no win" jobs. Mr. Ostar added that the authority of presidents has so eroded in recent years that it is difficult, and sometimes impossible, for them to exercise effective leadership.
>
> Many president agree on this score. The Rev. Theodore Hesburgh, president (emeritus) of the University of Notre Dame, has estimated that his real authority has now been chipped away to the extent that he now has roughly one tenth the power over university affairs that he had in 1952 when he became president.

Many of the above problems for college and university presidents can be traced directly to the Vietnam War. Many young men were concerned about being sent off to what they considered an unjust war, a war they believed the United States should not have been involved in. They often acted out their concern and frustration by scapegoating presidents. In community colleges, in particular, there were many young men who never had any intention of going to college before the Vietnam War—they were only there in an attempt to avoid being drafted for that unpopular war, many of these new students were African-American, thus also leading to demands for "Black Studies" programs. This often made for a student body easily manipulated by unscrupulous faculty members for their own aggrandizement. Such faculty members need a target, and what more popular a target than the president?

The reader is naive if he or she believes that Vietnam protests and Black Studies demands on campuses were largely organized by students—in many, if not most instances, such protests lead right back to influential faculty members, often from the sociology department.

Paul N. Elbin, President Emeritus of West Liberty College, sums up well the office of college president in a *Chicago Sun-Times* article titled, "A College President Is Always Right—Or Wrong":

> Having reached 65, the age of statutory senility and consequent retirement, I am in a position to take a backward look over 35 years in the college presidency.
>
> Every college president knows that he is the expendable man in his institution. While the professor stands behind an almost impregnable wall of security built by tenure, the president is exposed to fire from every side. Tenure is not for him, or even dependable vacation periods.
>
> The college president does indeed have a great life! Whatever he or his wife does is bound to be wrong in somebody's eyes.
>
> If he is under 45, he is impulsive and autocratic. If he is over 45, he is out of touch with today's world and plays too much golf.
>
> If he leaves a college less than 10 years, he is a quitter. If he stays longer than 10 years, he does not know when new leadership is needed.

If he approves the expulsion of a student, he is an old fogey and no friend of modern youth. If he disapproves the expulsion of a student, he encourages immorality or lawlessness.

If he spends much time at his desk, he ought to be out learning what is going on. If he spends much time out of the office, he ought to be at his desk attending to his job.

If he obtains $5,000,000 for a fine-arts center, he is incompetent because the college has a need for a field house. If he gets $5,000,000 for a field house, he should be fired because everyone knows that the fine arts are more important than athletics.

If he writes for publication, he is stealing time from his duties. If he does not write for publication, he is no scholar and is failing in public relations.

If he accepts invitations to speak off-campus, he ought to spend more time on campus. If he does not make speeches, he is insensitive to public relations and, besides, he's no good at public speaking.

If he takes a stand on controversial matters, he is tactless. If he does not take a stand on controversial matters, he is a coward.

If he talks with his board members, he is an apple polisher. If he seldom sees board members, he is too independent.

If he is a bachelor, he ought to be married. If he is married, his wife doesn't know her place.

If his wife takes any part in the life of the college, she is butting in. If she is not active on the campus, she is not helping her husband.

Much of the preceding holds equally true for school superintendents...and to a lesser extent subordinate administrators.

In the May 1971 issue of *The Journal of Higher Education*, William C. McInnes proposed "A Statement of Rights for College Administrators," no doubt in response to the chaos and disruptions on many campuses in the 1960's and early 1970's with concomitant debilitating effects on college administrators to stalwartly administer.

### *Preamble*

As freedom to teach and freedom to learn are inseparable facts of academic freedom, so is freedom to administer an inseparable part of modern university life. The administrative functions exists to serve and direct and provide the environment for teaching and learning. It depends, therefore, on appropriate opportunities and conditions of access to the university, of activity in the administrative office, on the campus, and in the larger community in which the university is located. It demands that, as with all freedoms, it be exercised with commensurate responsibility.

The purpose of this statement is to enumerate the basic provisions for freedom to administer.

### A. *Freedom of Access*

1. The administrator has a right to be considered for a position without any discrimination of race, sex, or creed.

2. The administrator has the right to be held properly accountable only to those designated by the governing board.

### B. *Freedom to Administer*

1. An administrator has the right to speak and act as official spokesman of the university according to the mandate given by the governing board and in accordance with the charter and governing documents of the institution.

2. An administrator has the right to create an organization to carry out policy within the limits set by the institution's official governing body.

3. An administrator has a right to a clear statement of his duties, his accountability, and the rules for which he is responsible.

4. An administrator has a right, within limits set by the charter and the governing body, to take action to preserve the resources of the university and to build up those resources for the future.

5. An administrator has a right to carry out his duties without outside interference, disruption, or personal harassment.

6. An administrator has a right to the continuance of his education in a manner similar to that of a faculty member.

7. An administrator has a right to be protected from any prejudicial or capricious administrative evaluations.

8. An administrator has the right to leave an institution in good standing in accordance with the agreement of employment.

C. *Freedom on Campus*

1. An administrator has a right to make inquiry and to express his personal opinion, even when dissenting, on any question as long as he makes it explicitly evident that he is speaking for himself and not for the institution.

2. An administrator has a right to have kept confidential his personal or religious beliefs and his political associations.

3. An administrator has the right to organize, to join associations which promote his interests, and to support causes by orderly means as long as it does not interfere with the carrying out of his administrative duties.

4. An administrator has a right to protection from libel, indecency, undocumented allegations, attacks on personal integrity, techniques of harassment and innuendo, and other manifestations of irresponsible journalism in campus publications.

5. An administrator has a right to have a clearly defined means to participate in the formulation and application of institutional policy affecting academic and administrative affairs.

D. *Freedom off Campus*

1. An administrator has a right to free speech, assembly, and petition.

2. An administrator has a right to protection from double jeopardy except where the interests of the university are distinctly and clearly involved.

3. An administrator has a right to privacy for himself and his family, free from harassment, intimidation, or threat.

E. *Freedom of Due Process*

1. An administrator has a right to due process in discipline proceedings comparable to that established for faculty members of the academic community.

While recognizing a hierarchy of administrators comparable to a hierarchy of faculty members, basic rules of fairness should be established for all, and all should be guaranteed procedural fairness. Proper jurisdiction, procedural rules, and the right to appeal should be clearly formulated. When an administrator is accused he should be properly informed as to the nature of the charge; he should be given a fair opportunity to refute the charge; he should not be subject to arbitrary action; there should be clearly stated provisions for appeal. In the investigation of his conduct, he should be informed of his rights and should be free from any harassment in the process. His status should not be altered pending final action unless the safety and the well-being of himself or others or the proper performance of his duty is impaired. When alleged misconduct may result is serious penalties, especially dismissal, and if the administrator questions the fairness of the disciplinary action taken against him, he should be granted, on request, the privilege of a hearing before a regularly constituted hearing committee, following appropriate procedural due process.

Lewis B. Mayhew, in the same May 1971 issue of *The Journal of Higher Education*, set forth some "Thoughts on "A Statement of Rights for College Administrators"":

Although there have been notable examples of inept and sometimes unconscionable administrative leadership in colleges and universities, yet when one surveys the academic landscape for at least the past three or four decades, one cannot help be impressed with the fact that when educational leadership and statesmanship have been exercised it has typically been done by outstanding presidents, deans, and occasionally department heads. It is a generally accepted truism that innovation and change in higher education have rarely, if ever, come from faculty efforts, the majority of innovations being the result of presidential thought and initiative. If administrators are to continue to be the primary source of leadership, innovation, and change, a number of the rights of administrators must be protected more diligently, for obviously the jeopardy to them in times of trouble is greater than it has been in the past.

There have been and are collegiate administrators whose actions and behavior might seem to warrant severe treatment; but on balance most seem to have been and to be honorable men and women not deserving the abuse and distrust so frequently heaped upon them. They typically have been drawn to administrative positions out of obviously mixed motives of which an important one is a sense of mission and a belief that the quality of education can be better because of their efforts.

Granted, abuse and distrust cannot be eliminated through legislation. Still, the emotional impact of those sentiments can be ameliorated through greater and more specific protection of administrative roles. No one knows the average tenure of presidents and deans. At one time it was supposed that four or five years was about average; and then longevity increased to about eight years for non-Catholic presidents and six years for those who presided over Catholic institutions. In recent times the longevity seems to have decreased rapidly and one can speculate that it now perhaps would be around three years on an average. Shortly before he resigned in the winter of 1970-71, the chancellor of the Columbia branch of the University of Missouri, who had been in office less than four years, could remark that he believed that, among incumbents throughout the nation, he was the senior head of a campus operating within a system. This shortened longevity of leadership cannot help but jeopardize the educational quality of institutions.

If American higher education goes the route of unionism, with faculties securing their rights through formal contracts for stipulated periods, equally binding protection for management would seem appropriate. In the corporate world, management is granted protection in the form of stock options or other security benefits, and something comparable to that degree of protection would seem needed by presidents, deans, and those department heads who fill a managerial role. Stock options in a deficit-spending nonprofit institution would not seem to be particularly desirable, but term contracts, enforceable by law if necessary, might approximate the virtues of a financial stake in the company.

....as a general rule, institutions should budget reserves so that a serious salary loss will not be sustained if an administrator must be removed from his position before the end of his stipulated term. There simply have been too many examples of deans fearing financial hardship if they revert to a professorial position, with the result that needed hard judgment and comment are withheld. Along the same line, institutions should maintain a salary insurance policy for their presidents to assure one or two years' salary to presidents who must be relieved. One elder statesman among university presidents maintained his own insurance program through what he called his "go to hell fund." His family maintained a reserve equal to one year's salary which provided him the security to deal openly, candidly, frankly, and, when necessary, sharply with his board of trustees and his faculty. An institution would seem to be in a better position to carry such an insurance policy.

Central to any workable bill of rights should be dispersion of the myth that administrators are responsible to the faculty. This is simply contrary to law, tradition, practice, and reality. Legal responsibility and accountability flow directly downward from boards of trustees to presidents and on to their chief administrative associates. Obviously, faculty members should be consulted, should provide advice, and should be involved in the decision-making apparatus. However, responsibility is another matter and this flows through legally sanctioned channels.

While considerable can be accomplished constitutionally through such things as a bill of rights, more specific contractual arrangements, and economic guarantees, still the fundamental issue in safeguarding administrators so that they can perform their missions is a moral issue deriving from the moral climate on the campus and the moral imperatives to which other constituencies respond. This point can be illustrated best by examining moral failures. In 1969 the Harvard faculty came close to voting "no confidence" in its president for handling legitimately problems of dissent which the faculty had been unwilling to face previously. Indeed, there was no faculty mechanism for coping with the occupation of university buildings by militant students; and the president, acting through his legitimate Council of Deans, established plans and carried them through. With respect to the rights of administrators, faculties should generally exercise self-restraint in censoring if they have been unwilling to take a responsible position themselves...[another] example happened at the University of Illinois when the board of trustees, without prior warning, called for the immediate resignation of both the president and the provost. No prior indications were visible that the board was dissatisfied. Indeed all reports suggested a healthy several years ahead. Board members simply cannot, in good conscience, allow themselves the luxury of action through pique. If a president is to be relieved, it should be as a result of established process, with the opportunity for hearings and the possibility of more judicious decisions...

College and university administration has fallen on troublous times. Incumbents are criticized, ridiculed, and denied essential powers of governance as they attempt to perform inhumanly difficult tasks. The conditions of administration can be improved through a statement of rights for college administrators, a restoration of legitimacy to administration, and, above all, the creation of a climate of trust which seems essential for a collegial enterprise.

The Board of Directors of the American Association of State Colleges and Universities adopted the following on May 6, 1970:

## BASIC RIGHTS AND RESPONSIBILITIES FOR COLLEGE AND UNIVERSITY PRESIDENTS

The history of American higher education strongly supports the contention that no college or university has made important progress except under the leadership of an outstanding president. At the present time, unfortunately, colleges and universities are experiencing increasing difficulty in attracting and holding able persons as chief administrative officers. And individuals remaining in such positions stand virtually unanimous in the opinion that their role has become much more difficult and demanding.

It is the purpose of this document, therefore, to identify certain basic principles that must be accepted if colleges and universities are to function in an orderly, purposeful way and to lay down those conditions necessary to insure the presence of effective leadership on the campus.

### Basic Principles

1) Before anything else, a college or university (particularly a public one) exists to serve the general society which created it and which supports it; such an institution does not belong to a particular group of persons within that society or within that institution.

2) A college or university serves many constituencies —faculty, staff, students, alumni, and parents of students being the closest ones. All of these constituencies have a stake in the institution and its development, and all should be provided with an opportunity to be informed and heard.

3) The board of trustees should hold the president free of any personal liability in the execution of his duties and responsibilities so long as he is acting as the board's chief executive officer. This should include protection against claims from damage suits and physical and psychological harassment.

4) The board of trustees should recognize that it, and not the president, holds final responsibility for the health, safety, and welfare of the institution and its personnel, particularly students. The president's main responsibility is that of providing students with reasonable opportunities to obtain an education, in accordance with the laws of the surrounding community, the policies of the board, and the resources of the institution.

The preceding enumerated rights and responsibilities apply substantively to school superintendents as well as chief executive officers in other public bodies such as city managers, fire and police chiefs, head city librarians, etc. In short, good practices in higher education are equally valid in other employment areas.

Perhaps the most serious problem facing professionals with lay governing boards is the very fact that they are *lay* boards. New board members need considerable in-service education programs and even experienced board members need periodic workshops on improving their effectiveness as policy makers. At Prairie State College, I had seven all new board members at one time (all together I had 14 board members who had never served on a school or college board). Such an abundance of inexperience and personal agendas some board members brought with them is largely responsible for the chaos the college faced during the 1968-73 academic years.

Personally, I would like to see the abolishment of local governing boards and in their stead install state-wide civil service systems (50 public school systems with one governing board in each state and three public higher education systems in each state—community colleges, state colleges, universities; each with its own governing state-wide board). Private education at all levels would be outside this proposal. I believe the result would be to have a much higher calibre of board member and that education would become much more professionalized and the cost benefits could be enormous.

If the above idea seems out in left field, let me state that it is not as far-fetched as it might at first appear. Having worked as a superintendent of schools as a federal civil service employee of the United States Department of Defense in the Overseas Dependents' Schools System for eleven years, as well as having worked directly with boards of trustees, I believe the civil service approach to be a far more educationally effective system because professionally trained persons are running it and professionals are being evaluated by other professionals.

The Overseas Dependents' Schools System (a school system that up to 1990 was the tenth largest American school system!) had no governing boards in any of its locations anywhere in the world where American military personnel and their families were stationed—and the system was by far the finest school system, in almost every way, of any school system I ever worked in or am acquainted with. Moreover, the state of Hawaii has but one governing board for all its public schools. Such a state educational system largely eliminates local petty politics and self-aggrandizement by some board member.

European countries have a civil service system in education and as we well know their students outperform ours in almost every cognitive skill. A civil service system, in my judgment, is a far more effective system than having school policies set by amateurs with parochial or self-serving interests. By having state-wide boards still leaves education in the hands of the public, but a state board is more likely to have, on average, much better qualified board members, and because the system would be so large, there would be much fairer treatment of CEO's.

Having 50 different public school systems and 150 different public higher education systems, coupled with a wide diversity of private education at all levels, would more than safeguard our freedoms and diversity. If there is a weakness of European and Asian civil service systems it is that they are *national* systems, with no competition per se within a nation, unlike a state-wide system such as in Hawaii. Such a proposal would provide stability in a community by reducing the politics of "Firing the Old Chief" so as to be able to "Hire a New Chief." It would be far more economically efficient to have statewide systems. It would considerably reduce the turmoil between the area superintendent and his or her staff with teachers since negotiations would be at the state level. A more harmonious teaching/learning environment would result. The same would be true for college and university presidents.

Regardless of what system of education we operate under, administrators have the responsibility to carry out the directives of their superordinates: but administrators also have the right *not* "to serve at the pleasure" of the superordinate ...fairness and justice demand otherwise.

# EPILOGUE

# Epilogue

Have there been any good results, in personal terms, from the trauma my family and I experienced at Prairie State College? Yes, one main one. Because no one would employ me as an administrator at any level, I started ETC Publications in 1972 of which this book is one of over a hundred titles published thus far. Being a book publisher is very satisfying work in which I answer to no one. Life is now good for all of us...but it took about ten, slow and difficult years to reach the station in life we had enjoyed in early 1970.

In *Hostrop*, the real results—both positive and negative—lie in the decisions of the courts. The results of *Hostrop* did not benefit me. This is true of most "pioneers." The results, instead, have benefitted scores of past and present administrators and will benefit thousands of future administrators. Nearly every reader of this book knows an administrator or has heard or read about an administrator who has said, "I'm mad as hell, and I won't take it anymore!" Before July 23, 1970, no administrator in our nation's history had *acted* on this feeling, federally, on a Constitutional basis. Probably in most, if not all such administrator cases since 1970, *Hostrop* is cited as *the* landmark case supporting administrators' rights to decent treatment over any contemplated dismissal action. I know of cases where an administrator, including one president, has retained his position because of *Hostrop* and others who have been given attractive inducements to resign rather than the board having to face the requirements of Constitutional due process. I am proud to have been a part of this process even though I personally wouldn't ever again go through a court process, particularly a bench trial vis-à-vis a trial by jury.

*Hostrop* also helped at least three administrators at Prairie State College to move to new positions without disruption—administrators who were told well in advance that their services would not be required beyond a reasonable given time, including the "Brutus" who replaced me. The Board had learned a lesson—not to take a chance on lengthy, costly, and time-consuming law suits.

*Hostrop* has helped to equalize the power between a superordinate and a subordinate when it comes to personnel disputes. Superordinates would now be foolish to risk summarily dismissing a subordinate—even in most just-cause cases—because of the turmoil and legal costs involved even in winning. When I speak of superordinates and subordinates, I am not just speaking about CEO's; any administrator who has supervisory responsibility over another administrator *must* afford the same due process rights to their subordinate administrator(s) as boards must give to their CEO's.

I "won the war" for all administrators and one battle for myself, in the token amount of $4,000 and reimbursement of court costs, but lost every other battle. The taxpayers of Illinois Junior College District 515 also lost—reportedly well over $100,000 in attorney fees and court costs The Prairie State College Board members won every other battle. Board members did not want to pay me the $61,000 due on my contract, and won. Board members did not want to pay me for the 49.6 days of accumulated leave valued at $5,532.31, and won that victory, too—an amount that would have resulted in my resignation. Had there not been the "meanness by the Board by refusing to pay me my accumulated leave, in addition to the six months severance pay they had agreed to, there never would have been the *Hostrop* case—such is the way landmark cases are born. And what did these Board members gain? Chaos...and three years later the powerful faculty union, who had named my replacement, demanded *his* termination—which again Board members concurred in.

In five years there had been four presidents at the college; in eight years, there had been five presidents ... as of

1978 I had lasted the longest. On the seven member Board there had been 21 different Board members during my 37 month tenure at the college. To say that Prairie State College was an unstable institution is an academe understatement. It is no wonder that with such instability it was the faculty union that was running the college—deciding who the administrators of the college were to be...and not only presidents.

I had three offers of presidencies—one in California before accepting the presidency of Prairie State College and two while at the college. In retrospect I should have accepted the California presidency...in California community colleges were long established and mature institutions, well past the "growing pains" of most other states as of 1970.

So, in the end, hardly anyone won. The Board's attorney *was* right about two things: "Only lawyers win" in a law suit...and "Hostrop will have a long time before he collects anything." I certainly did not win. The taxpayers of Illinois Junior College District 515 did not win. My lawyers, who were on a contingency basis, did not win. Board attorney Scariano did though— and handsomely. And yes, administrators have won some measure of protection heretofore not available.

May you, dear administrator, never be faced with a dismissal action. But if you are, study the lessons of *Hostrop* ...carefully...and well.

# Glossary of Legal Terms Relevant to Civil Rights Cases for the Layperson

Action—a suit or a lawsuit

(a) Action at law—to obtain ordinary legal relief.

(b) Action in equity—to obtain equitable relief.

Allegation—statement of pleadings, reciting what the pleader expects to prove.

Amicus curiae—friend of the court, not a party to the action or directly involved, but who has an indirect interest and information bearing on a legal issue under consideration.

Appellant—a party taking an appeal from a decision of one court to another court for a decision.

Appellate court—a court authorized to receive appeals from another court.

Appellee—a party against whom an appeal is taken.

Certiorari—a writ issued by a superior court directing an inferior court to send up for review the records and proceedings in a case.

Common law—legal principles derived from usage and custom or from court decisions affirming such usage and customs, as distinguished from law created by constitutions and statutes and court interpretations thereof.

Consideration —an inducement, perhaps an act, an amount of money or a promise.

Contract—an agreement for sufficient consideration to do or not to do a particular thing:

(a) Unilateral contract—a promise for an act.

(b) Bilateral contract—a promise for a promise.

Construe—determine the meaning.

Corporate body—sometimes referred to as a body corporate or a corporate entity—a legal creation or artificial person authorized to perform specific functions.

Damages—a money award as compensation or indemnity which may be recovered in court in a civil action.

Declaratory relief—a court decision which declares the rights of parties or expresses the opinion of the court on a question of law, without ordering anything to be done.

De facto—in fact, actually.

De jure—legally, as a matter of law.

Defendant—the party defending or denying; the party against whom relief or recovery is sought in a court decision.

Demurrer—allegation by one party in a court action which admits the matters of fact alleged by the other party to be true but, even so, are not of such legal consequence as to justify further proceedings in the case.

Dictum—statement of legal principle in a court decision which is not necessitated by the facts or the law of the case.

Enjoin—to prohibit or restrain by an injunction.

Estoppel—a bar raised by law which prevents a party from alleging or denying a certain fact because of his previous statements or conduct.

Ex parte—on one side only, a proceeding when granted for the benefit of one party only.

Injunction—a judicial order requiring a party to take or refrain from some specified action.

Indemnity—legal exemption from penalties attaching to unconstitutional or illegal actions, granted to public officers and other persons.

Jurisdiction—lawful right to exercise official authority.

Laches—failure to assert a right within a reasonable length of time, to be differentiated from a statue of limitations.

Liquidated damages—a specific sum of money stipulated by the parties by contract as the amount of damages to be recovered by one party for breach of an agreement by the other.

Litigant—a party to a law suit.

Litigation—a judicial contest or the act of carrying on a suit in a law court.

Litigious—controvertible or disputable.

Mandamus—a command by a court that a certain act be performed.

Malfeasance—commission of an unlawful act.

Misfeasance—improper performance of a lawful act.

Nonfeasance—failure to perform a required duty.

Offeree—the party to a contract who accepts the offer, the promisee.

Offeror—the party to a contract who makes the offer, the promissor.

Plaintiff—a party who sues by filing a complaint.

Plenary—having full powers.

Petitioner—a party who presents a written application to the court.

Precedent—a judicial decision considered as furnishing authority on a similar question of law in a subsequent and similar case.

Privilege—a right or immunity enjoyed only under certain conditions.

Procedural due process—that part of law which prescribes the method of enforcing rights or obtaining redress for their invasion.

Recovery—the obtaining of right to something by verdict or judgment of a court.

Remand a case—to send a case back to the court where it was initiated or was heard for further proceedings.

Respondent—a defendant in certain cases, usually the party against whom an appeal is taken.

Res ipso loquitor—the thing speaks for itself; rebuttal presumption of negligence.

Res adjudicata—a matter judicially decided.

Stare decisis—to stand by decided cases. Principle that when a court has declared a legal principle, it is the law unless and until changed by competent authority.

Statute—a law resulting from the exercise of legislative power, as by the Federal Congress or state legislatures.

Substantive due process—that part of law which creates, defines, and regulates rights.

Writ—a formal order under seal, issued in the name of a court enjoining the individual or body to whom it is issued to do or to refrain from some specific act.

# APPENDICES

## Appendix A

# In the United States District Court, Northern District of Illinois, Eastern Division— February 1, 1972

# APPENDIX C

## Opinion Of The United States District Court For The Northern District Of Illinois, Dismissing Cause For Failure To State A Claim
February 1, 1972

AUSTIN, *District Judge.*

## MEMORANDUM OPINION

This is a suit brought pursuant to the first, fourth, fifth, and fourteenth amendments to the United States Constitution and 42 U.S.C. 1981 et. seq. Plaintiff is a former chief administrative officer of Prairie State College and defendants are members of the board of the college district, who terminated plaintiff's employment. They are sued individually and as a corporate body.

Before the court is defendants' motion for summary judgment, which the court believes should be considered more properly as a motion to dismiss for failure to state a claim upon which relief can be granted. Filed with the court are plaintiff's amended complaint (a prior motion to dismiss having been granted), defendants' motion, two affidavits on behalf of the defendants, and memoranda submitted by both sides. In their memoranda both sides refer to depositions, but none have been submitted to this court.

In his complaint plaintiff alleges that he was fired because of an administrative staff memorandum in which he made recommendations for changes in the Ethnic Studies Program. The memorandum was intended to be confidential, but it is alleged that it was made public by someone other than plaintiff. He contends that his first amendment rights were violated since he was fired solely because of his memorandum and that his fifth and fourteenth amendment rights were violated because he was not given a hearing. This court finds that as a matter of law plaintiff has raised no constitutional claims and therefore the complaint is dismissed for failure to state a claim.

The most recent Supreme Court case concerning the first amendment rights of public school employees is *Pickering v. Board of Education*, 391 U.S. 563 (1968). In that case plaintiff, a high school teacher, sued the board after he was fired for sending to a local newspaper a letter that was critical of the way in which the school board and the superintendent handled proposals to raise revenue. The Court held that unless he knowingly or recklessly made false statements, a teacher could not be dismissed from public employment as a result of his speaking on issues of public importance. The Court noted, however, that factors not present in that case could result in a different finding:

> The statements [made by plaintiff] are in no way directed towards any person with whom appellant would normally be in contact in the course of his daily work as a teacher. Thus no question of maintaining either discipline by immediate superiors or harmony among coworkers is presented here. Appellant's employment relationships with the Board and, to a somewhat lesser extent, with the superintendent are not the kind of close working relationships for which it can persuasively be claimed that personal loyalty and confidence are necessary to their proper functioning.

*Id.* at 569-70

> * * *
>
> It is possible to conceive of some positions in public employment in which the need for confidentiality is so great that even completely correct public statements might furnish a permissible ground for dismissal. Likewise, positions in public employment in which the relationship between superior and subordinate is of such a personal and intimate nature that certain forms of public criticism of the superior by the subordinate would seriously undermine the effectiveness of the working relationship between them can also be imagined.

*Id.* at 570 n.3.

While none of the parties nor this court have found a case as the instant one involving a school administrator rather than a teacher, if the above-quoted exception drawn by the Supreme Court is to have any application, this court believes it must be in a case such as the one now before it.

According to the employment contract between plaintiff and defendant board, plaintiff agreed to "abide by all rules, regulations and directions issued by the Board in carrying out the duties of his position . . ." as chief administrative officer of the college. The nature of the position of a college president is such that the board must have the "confidence" in and the "personal loyalty" of the president. In order for the working relationship between them to be effective the right of a president to make public statements or to disagree with the board may have to be limited. Therefore, assuming that the memorandum which became public was the basis for plaintiff being fired,[1] this court finds that this is the type of case envisioned by the Court when it drew the exception in *Pickering* and that the plaintiff thus has no first amendment rights that were violated.

This court further finds that plaintiff has raised no due process rights that would entitle him to notice of charges and a hearing at which he could rebut them. The Supreme Court has held that interests must be considered to decide what due process rights an individual has:

> [C]onsideration of what procedures due process may require under any given set of circumstances must begin with a determination of the precise nature of the government function involved as well as of the private interest that has been affected by governmental action.

*Cafeteria & Restaurant Workers v. McElroy*, 367 U.S 886, 895 (1961). In that case the Court held that a cook at a cafeteria operated by a private concessionaire in a military gun factory could be excluded from the factory for reasons of security without being given a hearing. The Court noted that it "has consistently recognized that an interest closely analagous to [petitioner's], the interest of a government employee in retaining his job, can be summarily denied." *Id.* at 896.

Thus, in light of *Cafeteria Workers* this court must undertake a balancing of interests to decide what, if any, procedural due process rights may be guaranteed to plaintiff by the United States Constitution. Since, as mentioned above, no case involving a school administrator has been found by the parties, they have cited to this court cases involving non-tenured teachers.

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[1] It is not necessary to decide whether the memorandum in question was distributed privately or publicly and if publicly, whether it was done by plaintiff or someone else. If it was public it falls within the exception established in *Pickering*, and if private, the first amendment is not drawn into question, and moreover, the state can limit private debate where it is detrimental to the functioning of a public body. See *e.g.*, *Lefcourt v. Legal Aid Society*, 312 F. Supp. 1105, 1113 (S.D.N.Y. 1970).

Both parties have argued that the recent case of *Roth v. Board of Regents*, 446 F. 2d 806 (7th Cir. 1971), *affirming* 310 F. Supp. 972 (W.D. Wis. 1970), *cert. granted*, 40 U.S.L.W. 3194 (U.S. Oct. 26, 1971) (No. 71-162) supports their positions. In *Roth* plaintiff was a non-tenured assistant professor at a state university. After being informed that his one year contract would not be renewed, he sued, alleging that he was not offered another contract because of his expressions of opinion allegedly protected by the first and fourteenth amendments. In deciding whether plaintiff had any due process rights the trial court undertook the balancing test enunciated in *Cafeteria Workers.* While noting that a university should have "considerable latitude" in deciding whether a probationary teacher should remain and that it should have "available a very wide spectrum of reasons, some subtle and difficult to articulate and to demonstrate, for deciding not to retain a newcomer . . .," the court found in favor of the plaintiff. The court stated that the university had no interest in a regime which made a decision wholly without support in fact. The interest of the plaintiff in jeopardy was his academic career. The court found that the balancing test compelled the conclusion that under the due process clause the decision not to retain a state university non-tenured professor may not rest on a basis wholly unsupported in fact or on a basis wholly without reason. 310 F. Supp. at 978-79. The university was ordered to give reasons why plaintiff was not retained and to give plaintiff a hearing at which he could respond to those reasons.

The Court of Appeals affirmed, 446 F. 2d 806, 809 (7th Cir. 1971) holding that

> the district court properly considered the substantial adverse effect non-retention is likely to have upon the career interests of an individual professor and concluded, after balancing it against the governmental interest in unembarrassed exercise of discretion in pruning a faculty, that affording the professor a glimpse at the reasons and a minimal opportunity to test them is an appropriate protection.

The court acknowledged that other circuits have declined to recognize such rights,[2] but went on to point out that the Supreme Court has emphasized the importance of vigilant protection of constitutional freedoms in the academic community, citing *Shelton v. Tucker*, 364 U.S. 479, 487 (1960).

This court does not think that there need be the same "vigilant protection" when an administrator is involved as may be necessary when a teacher is. The need for teachers to have freedom in what they teach arises from the very heart of the first amendment. The workshop of the administrator, however, is not the classroom but the office and the conference room. His primary duties are to coordinate, delegate, and regulate, not to educate. The fact that he is the "executive officer *of the board* . . ." Ill. Rev. Stat. ch. 122, § 103-26 (Supp. 1972) (emphasis added illustrates the need for, and in fact the intention of the legislature for, a close working relationship between him and the board. The public retains control of the school system by electing the board, Ill. Rev. Stat. ch. 122, § 103-7 (Supp. 1972), which in turn must manage and govern the college. Ill. Rev. Stat. ch. 122, § 103-25 (Supp. 1972). It does this through the chief administrative officer.

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[2] 446 F. 2d at 809. The circuits are divided on the question. In *Orr v. Trinter*, 444 F. 2d 128 (6th Cir. 1971), the court used the balancing test and concluded that a non-tenured teacher had no due process rights because of the board's interest in free and independent action with respect to his employment. The Fifth Circuit, however, found that a non-tenured teacher must be given a hearing if he requests it. *Sindermann v. Perry*, 430 F. 2d 939 (5th Cir. 1970), *cert. granted*, 403 U.S. 917 (1971) (No. 952).

Thus, the considerations before this court are not the same as those before the courts in *Roth*. It is true that, as with *Roth*, the plaintiff's career may be harmed by his dismissal. The court acknowledges that if the dismissal was for reasons that had no factual basis, the college community as a whole is harmed by a reduction in respect for the board and other administrators and perhaps by a loss of good teachers as a result. Against these considerations, however, is the fact that the policies of the board, a publicly elected body, are carried out through the chief administrative officer. The board must therefore have wide discretion in deciding whether to hire or fire a person who will be or has been in essence its agent. The discretion, naturally, is not unlimited, but Illinois law prohibits the most obvious forms of constitutionally prohibited discrimination: that based on sex, race, color, creed or national origin. Ill. Rev. Stat. ch. 122, § 103-26 (Supp. 1972).

Just as the Supreme Court has recognized that the first amendment may have restricted application where "close working relationships" are involved (*Pickering*, 391 U.S. at 569-70), so also this court believes that the due process clause of the fourteenth amendment must be limited in application to those types of relationships in public employment.

This court finds that this plaintiff has no first amendment or due process rights which have been violated in regard to his public employment. The complaint is dismissed for failure to state a claim upon which relief can be granted.

/s/ R. B. Austin
Judge, United States District Court

Dated: February 1, 1972

# Appendix B

## In the United States Court of Appeals for the Seventh District—December 21, 1972

# APPENDIX D

## Opinion Of The United States Court Of Appeals For The Seventh Circuit
December 21, 1972
471 F.2d 488

Before SWYGERT, *Chief Judge*, CASTLE, *Senior Circuit Judge*, and PELL, *Circuit Judge*.

CASTLE, *Senior Circuit Judge*. Appellant Richard W. Hostrop appeals the action of the district court dismissing his civil rights complaint against the Board of Junior College District No. 515 and its members for failure to state a claim upon which relief can be granted. The basic question on this appeal is whether the rights of free expression and procedural due process traditionally given to teachers and other public employees extend also to a college president who was hired to act as the direct agent of a school board.

Plaintiff Hostrop's complaint alleged the following facts, which we shall take as true for the purposes of this appeal. Hostrop was appointed President and chief administrative officer of Prairie State Junior College in Chinago Heights, Illinois by the defendants through a series of contracts which extended his tenure until June 30, 1972.[1] On May 25, 1970, as part of his official duties, plaintiff prepared a confidential memorandum for circulation among his administrative staff which requested that the staff consider certain proposed changes in the college's ethnic studies program for discussion at the next staff meeting. After an unknown person made a copy of this memorandum public, certain defendants questioned Hostrop's right to make such a proposal and told him that it was a breach of his administrative duties and was not a matter of free expression. On July 13, 1970, plaintiff was summoned to the office of counsel which the Board had recently hired and told that he had the choice of resigning or taking the consequences of being fired. The publication of the memorandum was ment oned as being a prime reason for Hostrop's termination, although he was told that he would be fired without any notification of the charges against him. Ten days later the Board met and terminated Hostrop's contract without giving him any hearing or opportunity to speak in his defense. A list of charges that supposedly justified his termination was given to Hostrop some time later.[2]

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[1] Defendants challenged the validity of the contracts executed by the Board and Hostrop in their memorandum filed with the district court, but this issue was not resolved.

Plaintiff's complaint concluded that the alleged facts showed a deprivation of his right to free speech and a denial of due process of law, and asked that the court order the college to give him a full and complete hearing, enjoin the defendants from replacing him with another person as president, and declare that his dismissal violated his first amendment rights. A second count of the complaint alleged the same facts as the first count plus the facts that the defendants had violated the Illinois antisecrecy statute and that the plaintiff had suffered both mental strain and financial loss because of the defendants' conduct. This count asked for recovery of actual damages of $100,000 and punitive dagages of $500,000.

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[2] This belated submission of the reasons for dismissal listed such things as the failure of Hostrop to devote full time to his duties, his withholding of information from the Board, his failure to give attention to certain college problems, and his attempt to mislead the Board during the negotiations for the extension of his contract. Preparation of the ethnic studies memorandum was not specifically mentioned as a reason for dismissal, although one charge stated that "Hostrop failed adequately and competently to deal with the administration of the Black Studies Program, causing both the students at the college and the Board grave concern."

The district court dismissed the complaint for failure to state a claim upon which relief can be granted,[3] *Hostrop v. Board of Junior College District No. 515*, 337 F. Supp. 977 (N.D. Ill. 1972), finding that Hostrop's position as a college president directly responsible to the Board required that he be loyal to the Board and maintain its confidence in him as conditions of his continued employment. Reasoning from a remark in *Pickering v. Board of Education*, 391 U.S. 563 (1968), that first amendment rights of persons in personal and intimate working relationships with their superiors may be restricted, the court found that Dr. Hostrop's position *vis-a-vis* the Board required that his right to make public statements or to disagree with the Board be limited. 337 F. Supp. at 978-79. Applying the test of *Cafeteria Workers v. McElroy*, 367 U.S. 886 (1961), to balance the interests of the Board against those of Dr. Hostrop, the court found that the need of the Board to have wide discretion in deciding to fire its presidents without asserting reasons outweighed any need of the plaintiff to know the reasons for his dismissal and any harm to his professional career. 337 F. Supp. at 980.

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[3] The record shows that defendants moved for summary judgment on May 7, 1971. The deposition of Dr. Hostrop was filed with the clerk of the district court on June 1, 1971, and supporting affidavits and exhibits were filed in July and October. The district court treated the defendants' motion as a motion to dismiss in its opinion dated February 1, 1972, stating that no deposition had been filed. We have not considered the contents of the deposition for the purpose of disposing of this appeal, since it was never considered by the district court.

Initially, we note that the disposition of a motion to dismiss for failure to state a claim in a case such as this one is an extremely difficult task. As the district court recognized, resolution of the issues requires an analysis of the working relationship between Dr. Hostrop and the Board and a balancing of the various competing interests of each. Unfortunately, the record at this state of the litigation does not clearly define the working relationship between the parties. It does not indicate how closely Hostrop had to follow the dictates of the Board—how often he met with the Board, how much power he had to formulate educational policy with the Board's blanket approval, or whether he had any ability to debate Board members on certain issues that would be decided by a vote of the Board. A consideration of these factors would indicate more clearly whether Hostrop's right to make his recommendations or to disagree with the Board had to be limited, as the district court asserted, "[i]n order for the working relationship between them to be effective." Similarly, the record does not identify the nature of the competing interests or the extent to which they are irreconcilable—how a hearing procedure would interfere with the discretion of the Board in hiring and firing personnel, whether other administrators were granted hearings before action was taken against them, and what the effects of the hearings given others actually were. With these shortcomings in the record in mind, we turn to the allegations of the complaint.

### *I. Preparation of the Memorandum As a Ground for Discharge*

Plaintiff argues on this appeal that the protections that have traditionally been given to the speech and associations of academicians[4] should extend also to his circulation of the ethnic studies memorandum. It is true that the judiciary has steadfastly construed the concept of freedom of expression broadly as a means of prompting vigorous, robust debate,[5] and that it has consistently rejected attempts to formulate absolute rules which would restrict the first amendment rights of whole classes of individuals, whether they be students,[6] campus speakers,[7] school newspaper editors,[8] student organizers,[9] or teachers.[10] Against this commitment to academic freedom, defendants are asking this court to excise a class of academic personnel who will have no first amendment rights.

Defendants argue that college administrators like Dr. Hostrop can be discharged whenever they circulate proposals that might offend the sensibilities of the Boards that hired them, for their jobs require that they do not offend the Boards. Defendants rely upon language from *Pickering v. Board of Education*, 391 U.S. 563 (1968), to differentiate between teachers and administrators, one class which may dissipate the confidence of the school board by making certain statements, and one class which cannot afford to:

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[4] *Healy v. James*, 408 U.S. 169, 180-81 (1972), *Keyishian v. Board of Regents*, 385 U.S. 589, 603 (1967), *Wieman v. Updegraff*, 344 U.S. 183, 196 (1952) (Frankfurter, J. concurring).

[5] *New York Times Co. v. Sullivan*, 376 U.S. 254, 270 (1964), *Donahue v. Staunton*, ..... F.2d ..... (7th Cir.) (Slip Opinion No. 71-1160, July 6, 1972 at 10), *Kiiskila v. Nichols*, 433 F.2d 745, 748 (7th Cir. 1970).

[6] *Tinker v. Des Moines School District*, 393 U.S. 503, 513 (1969), *Breen v. Kahl*, 419 F.2d 1034, 1036-37 (7th Cir. 1969), *cert. denied*, 398 U.S. 937 (1970).

[7] *Brooks v. Auburn University*, 412 F.2d 1171, 1172 (5th Cir. 1969).

[8] *Scoville v. Board of Education*, 425 F.2d 10, 13 (7th Cir.), *cert. denied*, 400 U.S. 826 (1970).

[9] *Healy v. James*, 408 U.S. 169, 186 (1972).

[10] *Pickering v. Board of Education*, 391 U.S. 563, 574 (1968), *McLaughlin v. Tilendis*, 398 F.2d 287, 288-89 (7th Cir. 1968).

> The statements are in no way directed towards any person with whom appellant would normally be in contact in the course of his daily work as a teacher. . . . Appellant's employment relationships with the Board, and, to a somewhat lesser extent, with the superintendent are not the kind of close working relationships for which it can persuasively be claimed that personal loyalty and confidence are necessary to their proper functioning.
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> * * * * *
>
> It is possible to conceive of some positions in public employment in which the need for confidentiality is so great that even completely correct public statements might furnish a permissible ground for dismissal. Likewise, positions in public employment in which the relationship between superior and subordinate is of such a personal and intimate nature that certain forms of public criticism of the superior by the subordinate would seriously undermine the effectiveness of the working relationship between them can also be imagined. We intimate no views as to how we would resolve any specific instances of such situations, but merely note that significantly different considerations would be involved in such cases.

*Id.* at 569-70, 570 n.3. Defendants submit that personal loyalty and confidence are necessary for the proper functioning of the working relationship between Dr. Hostrop and themselves, and that since the circulation of the ethnic studies memorandum could have arguably affected this loyalty and confidence, Hostrop can be discharged.

We do not interpret the above-quoted remarks from *Pickering* so as to support defendants' position on this appeal, especially when that case is placed within the context of other first amendment decisions. It has been consistently held that a government cannot punish a person for his speech alone, but only for speech that causes substantial disruption or that hinders the functioning of the state.[11] In this perspective, *Pickering* should not be read to authorize the discharge of a college president merely because he expresses an opinion that could be interpreted as a sign of disloyalty or an undermining of the confidence placed in him. Instead, *Pickering* holds that an employee's speech may be regulated only if a public entity can show that its functions are being substantially impeded by the employee's statements. *Donahue v. Staunton,* ..... F.2d ....., (7th Cir.) (Slip Opinion No. 71-1160, July 6, 1972 at 14) (Swygert, C.J. dissenting). We find that Dr. Hostrop's suggestions about the ethnic studies program which appear in the complaint cannot, on their face and by themselves, be taken as a serious impairment of the effectiveness of the working relationship between him and the Board that the defendants could discharge him merely for making the suggestions.[12] Absent actual proof of such an impairment, the face of the pleadings shows no reasons to deny Dr. Hostrop's first amendment rights. It was therefore error to dismiss his complaint for failure to state a cause of action on first amendment grounds.[13]

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[11] *Grayned v. City of Rockford,* 408 U.S. 104, 118 (1972), *Cohen v. California,* 403 U.S. 15, 23 (1971), *Tinker v. Des Moines School District,* 393 U.S. 503, 513-14 (1969), *Terminiello v. Chicago,* 337 U.S. 1, 4 (1949).

In fact, the general guidelines drawn by *Pickering* for deciding whether an employee's speech should be restricted support Dr. Hostrop's first amendment right to propose changes in the curriculum of Prairie State

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[12] An important distinction between *Pickering* and the instant case is that teacher Pickering engaged in criticism of the school board and that Dr. Hostrop merely made a suggestion for a change in curriculum. It is unclear from *Pickering* whether the Supreme Court thought that criticism of a superior by an employee in a close working relationship with him would be analogous to the speaking of "fighting words" so that the state could discharge the employee merely because he spoke the words of criticism, or whether the state would have to prove that the working relationship between the two had deteriorated because of the criticism so that the two could no longer work effectively together.

In both *Lefecourt v. Legal Aid Society*, 312 F. Supp. 1105 (S.D.N.Y. 1970), *aff'd*, 445 F.2d 1150 (2d Cir. 1971), and *Watts v. Seward School Board*, 454 P.2d 732 (Alas. 1969), *cert. denied*, 397 U.S. 921 (1970), employees were discharged for a series of confrontations and incidents which cumulatively destroyed the efficiency of the governmental units for which the employees worked. Furthermore, in both cases the action of the government employer in discharging the employees was upheld only after a trial court heard evidence relating to the kind of criticism involved and its actual effects.

[13] The district court did not decide whether the memorandum was distributed publicly or privately, but thought this issue was important because of its view that the first amendment does not protect private communications. This point was not argued on appeal. Past decisions have extended the first amendment to protect private statements made by public employees, *Muller v. Conlisk*, 429 F.2d 901 (7th Cir. 1970), *Swaaley v. United States*, 376 F.2d 857, 863 (Ct. Cl. 1967), and statements made by public employees in carrying out their assigned duties. *Downs v. Conway School District*, 328 F. Supp. 338 (E.D.Ark. 1971), *Mailloux v. Kiley*, 323 F. Supp. 1387, 1392 (D.Mass.), *aff'd*, 448 F. 2d 1242 (1st Cir. 1971).

Junior College. *Pickering* recognizes that the position of the person seeking to express his views and the nature of the controversy to which he is directing his comments are important factors to consider in determining whether his freedom of expression should be protected. 391 U.S. at 571-72. The Court recognized that teachers, because of their position in the educational system, are able to make significant contributions to the public debate concerning the allocation of educational funds that precedes public votes. Here Dr. Hostrop, because of his background and leadership position as college president, sought to contribute to the discussion of a curriculum issue that would be decided by vote of the Board. To silence "vigorous and robust debate" in the formulation of educational policy on the administrative level would certainly be contrary to the spirit of the *Pickering* decision.[14]

Plaintiff's allegation that he was discharged merely for circulating the memorandum entitles him to relief under another legal theory distinct from his assertion of his right to freedom of expression. Plaintiff alleged that he circulated the memorandum as part of his official duties, and that it was only several days after it had become public that the members of the Board told him that he had no right to express his views in such a way and that he would be terminated because of this expression. These facts clearly show arbitrary action on the part of the defendants which the due process clause was meant to prevent. Plaintiff, as a public employee, is entitled to be protected from retaliation for actions which he had every reason to believe were a part of his assigned duties. The facts alleged in his complaint indicate that he has a cause of action resulting from the deprivation of substantive due process. *Conway v. DuPont School District*, 333 F. Supp. 1217, 1220 (D.Del. 1971). *cf. Downs v. Conway School District*, 328 F. Supp. 338, 348-49 (E.D. Ark. 1971), *Mailloux v. Kiley*, 323 F. Supp. 1387, 1392 (D.Mass.), *aff'd*, 448 F.2d 1242 (1st Cir. 1971).

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[14] We recognize that defendants may demonstrate at trial that Dr. Hostrop's circulation of the memorandum was evidence of insubordination and actually produced the harmful effects which the *Pickering* decision indicated may be grounds for discharge.

Such evidence could justify the discharge.

### *II. Denial of a Pre-Discharge Hearing*

The threshold inquiry in determining whether a complaint states a cause of action based on the denial of procedural due process is whether the plaintiff has shown that the state has infringed upon a personal interest protected by the fourteenth amendment—either life, liberty, or property. *Board of Regents v. Roth*, 408 U.S. 564, 577 (1972), *Lipp v. Board of Education*, ..... F.2d ....., (7th Cir.) (Slip Opinion No. 71-1912, November 27, 1972 at 4 n.3). If the complaint does assert the deprivation of a protected interest, due process of law requires that certain procedural safeguards be extended before the state can extinguish that interest. Defendants argue that plaintiff has asserted no interests worthy of due process protection. They also argue that they should have unfettered discretion to hire and fire presidents as a means of expediently carrying out their statutory duties, and that this necessity outweighs any interest of the plaintiff in receiving any kind of hearing before his termination.

We find that plaintiff's complaint alleges at least two protected interests which the defendants have infringed upon, and that plaintiff was entitled to some form of hearing before his discharge. Plaintiff's complaint makes a credible showing of a deprivation of "liberty" as it is defined in *Board of Regents v. Roth*, 408 U.S. at 573. A person is deprived of "liberty" if the state damages his standing in the community by charging him with an unsavory character trait such as dishonesty or immorality. Plaintiff's complaint alleges facts showing an attack by defendants on his veracity, for the list of charges which the defendants submitted to justify his dismissal accused him of misrepresentations, supplying false information, and withholding important information. In such a case, due process must provide notice and an opportunity to refute such charges. *Id.* Plaintiff's complaint also alleges facts showing a deprivation of "property" as it is defined in *Roth*, *Id.* at 576-78. A person is deprived of property if the government extinguishes his legitimate claim of entitlement to his job. The complaint alleges that Dr. Hostrop had a legitimate claim of entitlement to the position of President of Prairie State Junior College at the time he was discharged on July 23, 1970, for defendants had agreed to employ him until June 30, 1972 under the terms of a series of employment contracts. A term of employment set by contract has been recognized as a property interest which the state cannot extinguish without conforming to the dictates of procedural due process. *Perry v. Sindermann*, 408 U.S. 593, 601 (1972), *Board of Regents v. Roth*, 408 U.S. at 576-77. The existence of such a contractually-established property interest obligates the Board to grant plaintiff a hearing where he can be fully informed of the reasons for his nonretention and challenge their sufficiency.[15]

Having found that plaintiff has asserted protected interests that are entitled to due process procedural safeguards, we must balance the interests of the state against those of the individual to determine the form of hearing that Dr. Hostrop is entitled to before his termination. *Board of Regents v. Roth,* 408 U.S. at 570. The Board's interest consists of maintaining efficiency through the prompt removal of its chief administrator when it reasonably believes that it can no longer work effectively with and through that person. But it is questionable whether efficiency is a compelling interest,[16] so that this consideration should work to deny a hearing for one college president when courts have rejected it as a rationale for denying hearings to thousands of other employees. *See, Perry v. Sindermann,* 408 U.S 593 (1972), *Kennedy v. Sanchez,* ..... F. Supp. ..... (N.D.

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[15] The fact that plaintiff relies upon his employment contract to establish a property interest worthy of protection through the due process clause does not mean that his only remedy is a contract action in state court. A civil rights action based on the deprivation of due process and a contract action to recover damages for a breach are independent remedies. The civil rights action based on deprivation of a property interest established by contract seeks vindication for the arbitrary manner in which the contract was breached. A "garden variety" contract action seeks damages only for the losses caused by the breach once it has occurred in any manner whatsoever. There will be occasions when one action will lie but the other will not, as when the state has grounds to break an employment contract, but does so by violating an employee's due process rights to notice and a hearing.

[16] "The price which a government must pay to protect the constitutional liberties of its employees is some loss of the efficiency enjoyed by private employers; the Supreme Court has repeatedly decided that the value of those individual liberties is well worth the cost." *Illinois State Employees Union, Council 34 v. Lewis,* ..... F.2d ..... (7th Cir.) (Slip Opinion No. 71-1619, September 18, 1972 at 19).

Ill.) (Opinion No. 72 C 771, October 24, 1972). Dr. Hostrop's interests lie in protecting his first amendment rights and future employment prospects and in avoiding dismissal when it is not justified by the facts. We find that the resolution of these interests requires that plaintiff be given a notice of the charges against him, notice of the evidence upon which the charges will be based, a hearing before a tribunal possessing apparent impartiality, and a chance to present witnesses and confront adverse evidence at the hearing. *Board of Regents v. Roth*, 408 U.S. at 570 n.7, *Ferguson v. Thomas*, 430 F. 2d 852, 856 (5th Cir. 1970), *Kennedy v. Sanchez*, ..... F. Supp. ..... (N.D. Ill.) (Opinion No. 72 C 771, October 24, 1972 at 6.) *See also, Lucas v. Wisconsin Electric Power Company*, 466 F.2d 638, 652 n.30 (7th Cir. 1972). We recognize that there are differences between college administrators and teachers so that the Board may have different justifiable grounds for dismissing its president. A court that may be called upon to review the findings of an administrative hearing which results in the discharge of a college president will have to take the particular duties of the president and his working relationship with the school board into account.

We find that the plaintiff has stated valid causes of action showing that he was deprived of his first amendment right to free expression and his fourteenth amendment right to due process of law. Accordingly, we remand this case to the district court for the consideration of the causes of action the plaintiff has pleaded.

REVERSED.

A true Copy:

Teste:

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*Clerk of the United States Court of Appeals for the Seventh Circuit*

# Appendix C

## In the Supreme Court of the United States, January—May 1973

In The
SUPREME COURT OF THE UNITED STATES
October Term, 1972

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*No.*

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BOARD OF JUNIOR COLLEGE DISTRICT NO. 515, COUNTIES OF COOK AND WILL AND STATE OF ILLINOIS, a body politic and corporate, and JAMES GRIFFITH, ANTHONY HANNAGAN, DORIS HILL, WILLIAM JACKSON, LESTER KLOSS, SHIRLEY MELECKER AND THOMAS PORTER, individually and as members of the Board of Trustees,

*Petitioners,*

*vs.*

RICHARD W. HOSTROP,

*Respondent.*

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# PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

Petitioners pray that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the Seventh Circuit entered on December 21, 1972.

## CITATION TO OPINIONS BELOW

The opinion of the District Court, printed in Appendix A hereto, *infra*, p. 1a, is reported in 337 F. Supp. 977 (1972).

The opinion of the Circuit Court of Appeals, printed in Appendix A hereto, *infra*, p. 8a, is unreported.

## JURISDICTION

The judgment of the Circuit Court of Appeals was entered on December 21, 1972. The jurisdiction of this Court is invoked under 28 U.S.C., Section 1254(1).

## APPLICABLE CONSTITUTIONAL AND STATUTORY PROVISIONS

### Constitutional Provisions

1. Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.
   (U.S. Constitution, Amendment XIV, Section 1)

2. No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.
   (U.S. Constitution, Amendment V)

3. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person

within its jurisdiction the equal protection of the laws.
(U.S. Constitution, Amendment XIV, Section I)

## Statutory Provisions

1. Every person who under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory, subjects or causes to be subjected any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress.
(42 U.S.C. § 1983)

## QUESTIONS PRESENTED

1. Whether the chief administrative officer of a junior college can be dismissed without affording him the following protection: notice of the charges against him; notice of the evidence upon which the charges will be based; a hearing before a tribunal possessing apparent impartiality; and a chance to present witnesses and confront evidence at the hearing.

2. Whether a public employee's procedural due process and first amendment rights can be determined by a court when the record before that court does not disclose the working relationship between the employee and his employer.

3. Whether the procedural due process safeguards which must be granted to a chief administrative officer of a public school must be identical in form to those extended to teachers.

4. Whether a board of education can serve as the forum for a pre-discharge hearing when that board discharges its chief administrator.

## STATEMENT

The former chief administrator of a junior college filed a federal civil rights action against his former employing board as well as against the individual members of the board. His complaint alleged that his First, Fourth, Fifth, and Fourteenth Amendment rights were violated when he was discharged without a hearing before an impartial tribunal following the public disclosure of a memorandum which he had prepared and distributed to the administrative staff. The memorandum criticized the existing Ethnic Studies Program and proposed drastic changes in it.

In the District Court, defendants moved for summary judgment on the ground that no genuine issue of material fact was raised by plaintiff's amended complaint and his disposition. Although the Court's docket sheet indicates that the deposition was filed eight months previous to the District Court's decision, the District Court mistakenly concluded that no deposition had been filed. Accordingly, the District Court considered the motion as a motion to dismiss for failure to state a claim upon which relief can be granted, and dismissed the case.

The District Court based its dismissal of plaintiff's First Amendment claim on language found in *Pickering* v. *Board of Education,* 391 U.S. 563 (1968). While holding that a classroom teacher could not be fired for speaking out on issues of public importance, the *Pickering* court had remarked that the presence of other factors might have dictated a different result:

> The statements [made by plaintiff] are in no way directed towards any person with whom appellant would normally be in contact in the course of his daily work as a teacher. Thus no question of maintaining either discipline by immediate superiors or harmony among

> coworkers is presented here. Appellant's employment relationships with the Board and, to a somewhat lesser extent, with the superintendent are not the kind of close working relationships for which it can persuasively be claimed that personal loyalty and confidence are necessary to their proper functioning.
>
> * * *
>
> It is possible to conceive of some positions in public employment in which the need for confidentiality is so great that even completely correct public statements might furnish a permissible ground for dismissal. Likewise, positions in public employment in which the relationship between superior and subordinate is of such a personal and intimate nature that certain forms of public criticism of the superior by the subordinate would seriously undermine the effectiveness of the working relationship between them can also be imagined.
>
> (391 U.S. 563, 569-570 (1968))

After its analysis of the facts in the present case, the District Court concluded that the factors referred to in *Pickering* were present and the "different conclusion" was applicable. Specifically, the District Court determined that Dr. Hostrop's position was one involving a close and intimate working relationship with his employer and, because of this relationship, his employer could limit his right to disagree with the board.

Finally, in rejecting plaintiff's claim that his dismissal required a trial-type hearing, the Court again relied upon *Pickering*:

> Just as the Supreme Court has recognized that the First Amendment may have restricted application
>
> where "close working relationships are involved" (*Pickering*, 391 U.S., at 569-70), so also this court believes that the due process clause of the Fourteenth

Amendment must be limited in application to those types of relationships in public employment.

On appeal, both parties again referred to and quoted from the plaintiff's deposition. In particular, the defendants argued that the deposition proved that plaintiff was discharged at a meeting specially convened for the purpose of considering plaintiff's employment status, and that both plaintiff and his attorney were informed of the time, place, and nature of the meeting, but he and his attorney refused to attend the meeting. Although the deposition was a part of the record on appeal, and, therefore, under Sections 10(d) and 30(a) of the Appellate Court's own rules, could be relied upon by the parties and considered by the Appellate Court, the Appellate Court expressly refused to consider the deposition. The Appellate Court rejected the District Court's analysis of *Pickering,* and decided that plaintiff's amended complaint contained allegations which, if true, constituted violations of plaintiff's First Amendment rights to free speech and his procedural and substantive rights under the Fourteenth Amendment. The Court also stated that: "[t]he record does not identify the nature of the competing interests or the extent to which they are irreconcilable. . . ." Having concluded that the record did not identify the nature of the competing interests, the Court, nevertheless, proceeded to balance these interests to ascertain the nature of the predischarge hearing required by the Fourteenth Amendment. It then concluded that the plaintiff was entitled to "a notice of the charges against him, notice of the evidence upon which the charges will be based, a hearing before a tribunal possessing apparent impartiality, and a chance to present witnesses and confront adverse evidence at the hearing."

## REASONS FOR GRANTING THE WRIT

1. The decision of the court below is in conflict with the decisions of the United States Supreme Court in *Cafeteria Workers* v. *McElroy*, 367 U.S. 886 (1961), *Pickering* v. *Board of Education*, 391 U.S. 563 (1968), *Board of Education* v. *Roth*, 408 U.S. 564 (1972), and *Perry* v. *Sindermann*, 408 U.S. 593 (1972). In *Pickering*, this court made it clear, beyond doubt, that the First Amendment rights of public employees must be determined in light of the employment relationship of the parties (391 U.S. 563, 569-570); plaintiff's employment relationship was ignored here. In *Cafeteria Workers* and, again, in *Roth*, this court stated that the due process procedures required by the Fourteenth Amendment can only be determined through a balancing process. (367 U.S. 886, 895 (1961)). At page 895 of the *Cafeteria Workers* case, the Supreme Court stated:

> The Fifth Amendment does not require a trial-type hearing in every conceivable case of government impairment of interest . . . "Due process," unlike some legal rules, is not a technical conception with a fixed content unrelated to time, place and circumstances. It is compounded of history, reasons, the past course of decisions. *Joint Fascist Comm.* v. *McGrath*, 341 U.S. 123, 162-163 (concurring opinion)

The Supreme Court also defined the considerations involved in determining the procedures required in a given case:

> [C]onsideration of what procedures due process may require under any given set of circumstances must begin with a determination of the precise nature of the government function involved as well as of the private interest that has been affected by governmental action. (367 U.S. 886, 895 (1961))

In *Roth,* the Supreme Court again referred to the need for a balancing of interests: ". . . a weighing process has long been a part of any determination of the form of hearing required in particular situations by procedural due process." (408 U.S. 564, 570 (1972)).

Given the Appellate Court's conclusion that the record did not identify the nature of the competing interests, it is apparent that it did not undertake any true balancing. Rather, after refusing to analyze the type of hearing offered to plaintiff, as evidenced by his own deposition, the Court mandated a full trial-type hearing before an "apparent impartial tribunal." It is submitted to this Court that if the *pro forma* type of balancing evident in this case is permitted, the guidelines established in *Cafcteria Workers, Pickering, Roth,* and *Sindermann* will become meaningless. Instead, federal courts will eschew any meaningful balancing and merely mandate full trial-type hearings.

2. Clearly, the questions presented here are of great importance affecting virtually every public school in the United States. The majority of the public schools in this nation, whether they be elementary schools, high schools, or junior colleges, are governed by locally elected boards of trustees. These boards are charged by their respective state statutes with developing and implementing the policies necessary for the operation of their schools. To implement their policies, these boards have traditionally employed administrators. The most important administrator in any school district is the chief administrator, for this individual serves as the alter ego of the board in his relations with the teachers, the students, and the community. Unlike a teacher, his position requires that he cannot be an adversary of the board, but he must serve as its

advocate. When policy disagreements arise between him and the board, he cannot call an "impasse"; instead, he must carry out the board's policies. Truly, his position vis-à-vis the board is a close and intimate working relationship requiring a high degree of personal loyalty and confidence.

To require school boards to provide full trial-type hearings before apparent impartial tribunals prior to discharging their chief administrators would create havoc and uncertainty in the nation's public schools. Such a requirement is inherently inconsistent with the employee-employer relationship involved. Moreover, to state, as the lower court did, that the unnamed and unidentified tribunal could determine that the chief administrator should be reinstated ". . . when [his discharge] is not justified by the facts" is unthinkable. Faced with such a possibility, school districts would become extremely reluctant to dismiss even the most incompetent chief administrators.

Furthermore, those cases which have required a prior hearing accompanied by reasons for the State's actions are in no way analogous to the present case. In *Connell* v. *Higgenbotham,* 403 U.S. 207 (1971), the court held that a public employee may not be summarily dismissed for refusing to swear that he does not believe in the overthrow of the government by force. In *Goldberg* v. *Kelly,* 397 U.S. 254, 264-265 (1970), the court held that the welfare benefits may not be terminated without notice and a prior hearing. In *Bell* v. *Benson,* 402 U.S. 535, 539 (1971), the court held that a state license may not be summarily revoked where the effect of license revocation might preclude a person from pursuing his livelihood. In *Wisconsin* v. *Constantineau,* 400 U.S. 433 (1971), the court held that a person may not be subjected to public disgrace by the government without a prior hearing.

Unlike any of the aforementioned cases, the present case does not present any prospect for a remedy through a hearing. In *Connell, Goldberg, Bell,* and *Constantineau,* the right to a hearing afforded by the Supreme Court at least, presented the prospect that a hearing could afford the affected person some relief. For instance, it is possible that in *Connell* a hearing could show that the prospective employee did not believe in the overthrow of the government. In *Goldberg*, it is possible that a hearing could show that the plaintiff was entitled welfare benefits. In *Bell* it is possible that a hearing could show that the plaintiff was entitled to be licensed by the state. In *Constantineau,* it is possible to show that the plaintiff was not frequently intoxicated. In the present case, there is no possibility that the plaintiff could be reinstated. The plaintiff has made it very clear that he had no intention of obeying the orders and directives of the Board of Trustees. Furthermore, the fact that the Board has lost confidence in the President completely precludes any further working relationships between the plaintiff and the Board of Trustees. If the Board is to fulfill its statutory obligations to manage and govern the college, it must retain the right to summarily dismiss its President when it no longer has confidence in him. To accept any other conclusion would force the Board to accept a President with whom it can no longer work in carrying out its duties.

3. While the decisions of this Court in *Roth* and *Sindermann* have done much to clarify questions concerning due process rights in cases of teacher dismissals, it is urged that further clarification is needed as to the due process and First Amendment rights of those public employees who serve in administrative or managerial capacities. The problem and issues involved in this case,

of course, are not limited to public schools; rather, these issues can arise whenever any public body attempts to dismiss an administrator. Since there are millions of employees who fall into this category, the issues raised by this case will undoubtedly arise again and again. Until these issues are resolved by this Court, the only federal precedent dealing with the procedural and substantive due process rights of chief administrators will be the Appellate Court's decision in the instant case, and that Court's opinion has merely equated the rights of chief administrators with the rights of classroom teachers.

## CONCLUSION

For the foregoing reasons, this petition for a writ of certiorari should be granted.

Respectfully submitted,

ANTHONY SCARIANO
BRUCE C. MACKEY
*Counsel for Petitioners*

March 16, 1973

IN THE

# Supreme Court of the United States

OCTOBER TERM, 1973

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BOARD OF JUNIOR COLLEGE DISTRICT NO. 515, COUNTIES OF COOK AND WILL AND STATE OF ILLINOIS, a body politic and corporate, and JAMES GRIFFITH, ANTHONY HANNAGAN, DORIS HILL, WILLIAM JACKSON, LESTER KLOSS, SHIRLEY MELECKER AND THOMAS PORTER, individually and as members of the Board of Trustees,

*Petitioners,*

vs.

RICHARD W. HOSTROP,

*Respondent.*

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# RESPONDENT'S BRIEF IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

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Respondent prays that the requested writ of certiorari not issued to review the judgment of the United States Court of Appeals for the Seventh Circuit entered on December 21, 1972.

## STATEMENT OF THE CASE.

In July, 1967, Dr. Richard Hostrop was hired by the Board of Junior College District No. 515 as Chief Administrative Officer and President of Prairie State College, and was given a written contract for one year. His employment was regularly extended by written contract. In fact, shortly before the present dispute arose, a two-year contract was abrogated and replaced by a new two-year contract at a higher salary, extending through June, 1972. Obviously, at that time defendants were quite pleased with respondent's performance of his duties.

In May, 1970, plaintiff, acting in his official capacity and fully within his authority, circulated a confidential memorandum to the administrative staff of Prairie State, simply for the purpose of study and subsequent comment at an upcoming Cabinet meeting. The memorandum proposed, only as a topic for discussion, the proposition that the school discontinue its existing Ethnic Studies Department, and reassign the relevant ethnic programs to other academic departments. For example, ". . . Afro-American History would be taught within the History Department, Ethnic Art courses within the Art Department, 'Black Psychology' taught within the Psychology Department, Afro-American Communications taught within the English Department, Swahili taught within the Foreign Languages Department, etc." The memorandum also proposed that the Director of Ethnic Studies be responsible to serve as a resource person to the entire academic community.

Without the knowledge or approval of respondent, some unknown person caused the memorandum to be published in the school newspaper. At a subsequent Board Meeting, it was publicly stated to the Board that it had no plan to change the Ethnic Studies program for the upcoming school year. At this time, certain members of the Board of Trustees questioned plaintiff's right to compose the memorandum. Almost immediately thereafter, plaintiff was called into the office of a newly appointed and uninformed special counsel to the board and advised that he had the choice of resigning or being fired, that his contract was terminated, that no hearing would be permitted, and that no specific charges would be given, although allegedly one of the reasons for his termination was the circulation of the memorandum. Plaintiff refused to resign, demanded proper notice of formal charges and a hearing in accordance with the Board's long established Policies and Procedures. On July 23, 1970, without notice or charges of any kind to plaintiff, his employment was terminated at a special board meeting. It was only after this action had taken place that plaintiff's attorney was given a statement of the alleged reasons for plaintiff's termination, one of them well founded. The Board continued to refuse to grant plaintiff a hearing on any of the alleged reasons for his termination. It still persists in this attitude.

Plaintiff's suit, brought under 42 U.S.C. §1983, was dismissed by the District Court, on motion and without a trial, for alleged failure to state a claim upon which relief can be granted. The basis for this conclusion was that "the nature of the position of a college president is such that the board must have the 'confidence' in and the 'personal loyalty' of the president," and thus, the plaintiff had "no first amendment rights that were violated." The district court also held that respondent had no due process rights which would entitle him to a hearing.

The Court of Appeals for the Seventh Circuit reversed and remanded, holding that plaintiff had indeed stated a cause of action. In a well-reasoned and comprehensive opinion, the Court recognized the commitment of our society to academic freedom, and rejected defendants' attempt "to excise a class of academic personnel who will have no first amendment rights." The Court held that under *Pickering v. Board of Education*, 391 U.S. 563 (1968), "an employee's speech may be regulated only if a public entity can show that its functions are being substantially impeded by the employee's statements." The Court also held that plaintiff was "entitled to be protected from retaliation for actions which he had every reason to believe were a part of his assigned duties."

The Court rejected defendants' contention that they had an unfettered discretion to hire and fire presidents at will, despite any outstanding contract, as here. Concluding that the charges given to plaintiff after the firm decision to terminate his employment had been made were such as to damage his standing in the community and professionally by charging with him dishonesty, the Court held that "due process must provide notice and an opportunity to refute such charges." The Court also found a deprivation of plaintiff's property in the form of "a legitimate claim of entitlement to the position of President of Prairie State Junior College" . . . under the terms of a series of employment contracts." The Court found that the existence of this property right "obligates the Board to grant plaintiff a hearing where he can be fully informed of the reasons for his nonretention and challenge their sufficiency." The form of hearing to which he was entitled was defined so as to require "that plaintiff be given a notice of the charges against him, notice of the evidence upon which the charges will be based, a hearing before a tribunal possessing apparent impartiality, and a chance to present witnesses and confront adverse evidence at the hearing."

## REASONS FOR REFUSING THE WRIT.

Apparently, defendants have abandoned their claims that plaintiff has no First Amendment rights, and now ask this Court to grant their request for a Writ of Certiorari based solely upon the form of hearing which the Court of Appeals mandated in its opinion in this matter. Defendants object to the requirement that they be required to hold "a full trial-type hearing before an 'apparent impartial tribunal.'" (Petition, page 8) The basis for this objection is that to require such a hearing in the case of chief administrators "would create havoc and uncertainty in the nation's schools." (Petition, p. 9) Plaintiff respectfully submits that the issue sought to be raised by defendants here is insubstantial, and does not present a ground upon which this Court should grant its writ. Furthermore, the record in this case does not present a proper vehicle for the exploration of such an issue, should that issue be deemed substantial.

Defendants' argument amounts to nothing more than an assertion that school boards across the country should be given carte blanche to discharge their chief administrative officials in disregard of rudimentary elements of due process. In the recent cases of *Board of Regents* v. *Roth,* 408 U.S. 564 (1972) and *Perry* v. *Sinderman,* 408 U.S. 593 (1972), this Court fully explored the rights of academic personnel in regard to freedom of speech and due process. The only distinguishing factor between this case and those is that here the plaintiff is the chief administrative official rather than a teacher. That distinction is one only of degree, not of kind, and presents no new considerations which should impel this Court to re-examine again those guidelines which it so clearly set forth in the *Roth* and *Sinderman* cases. What was said there is dispositive of this matter, as correctly determined by the Court of Appeals.

Defendants proceed on the erroneous grounds that the nature of the protection afforded to individuals rests entirely upon their status. This Court has rejected that contention. It is the form of interest possessed by the plaintiff which has been infringed by defendant which is determinative. As was said in *Perry* v. *Sinderman, supra,*

> "We have made clear in *Roth, supra, at* ......, 92 S. ....Ct. at ........, that 'property' interests subject to procdural due process protection are limited by few rigid, technical forms. Rather, 'property' denotes a broad range of interests that are secured by 'existing rules or understandings.' Id. at ........, 92 S. Ct. at .......
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> "A person's interest in a benefit is a 'property' interest for due process purposes if there are such rules or mutually explicit understandings that support his claim of entitlement to the benefit and that he may invoke at a hearing. *Ibid.*"

As was found in *Perry*, plaintiff clearly has a property interest here which entitles him to due process protection. He was working on a written contract, which gave him specific entitlement to employment for a specific period of time. This contract had recently been extended at increased compensation. It is this interest which is being protected, not the position occupied. This was also emphasized in *Roth,* where the Court said:

> "Before a person is deprived of a protected in terest, he must be afforded opportunity for some kind of a hearing 'except for extraordinary situations where some valid governmental interest is at stake that justifies postponing the hearing until after the event.' *Boddie* v. *Connecticut*, 401 U.S. 371, 379, 91 S. Ct. 780, 786, 28 L. Ed. 2d 113. 'While "[m]any

> controversies have raged about . . . the Due Process Clause," . . . it is fundametal that except in emergency situations (and this is not one) due process requires that when a State seeks to terminate [a protected] interest . . . it must afford "notice and opportunity for a hearing appropriate to the nature of the case" *before* the termination becomes effective.' *Bell* v. *Burson*, 402 U.S. 535, 542, 91 S. Ct. 1586, 1591, 29 L. Ed. 2d 90." 408 U.S. at ........,92 S. Ct. at 2705 (fn. 7)

Contrary to the assertions of defendants, a hearing prior to the decision to terminate is the rule, rather than the exception. A subsequent hearing is to be countenanced only when there is some extraordinary situation where some valid governmental interest is at stake. There has been no showing that this case presents such an extraordinary situation which would require postponing the hearing until after the damage has been done. Defendants have presented no reasons why this Court should consider departing from that well-established rule in situations involving run-of-the-mill disputes between school boards and administrative personnel.

In *Perry* it was held that proof of a property interest such as contractual entitlement to a job position "would obligate college officials to grant a hearing at his request, where he could be informed of the grounds for his nonretention and challenge their sufficiency." 408 U.S. at ......, 92 S. Ct. at 2708.

The only thing which has been added to this requirement by the Court of Appeals is the stipulation that the hearing be held "before a tribunal possessing apparent impartiality."' It is difficult to conceive how defendants could object to such a fundamentally sound requirement. Surely they do not ask this Court to sanction the holding of a hearing by a biased tribunal which has already predetermined the case. To so hold would destroy the reasons for holding the hearing in the first place. It would sanction the existence of a kangaroo court. If a hearing is to be held prior to the taking of the proposed action, there must be a reasonable chance on the part of the employee to convince the decision-makers that the proposed action ought not to be taken. Anything less would be nothing more than paying lip-service to the Constitution while ignoring its substantive protections.

*The lack of good faith of defendants herein is amply demonstrated even in their Petition for Writ of Certiorari, where they state that "there is no possibility that the plaintiff could be reinstated."* (Petition, p. 10) This shows that at no time had defendants ever considered granting plaintiff the constitutional rights to which he was entitled. They had made up their mind, and nothing that could be done or said would change their minds. Even proof that their reasons for discharge were totally unfounded and erroneous would not serve to grant plaintiff his contractual and constitutional rights.

While tacitly recognizing that plaintiff does in fact have First Amendment rights to freedom of speech, defendants reiterate their previous arguments that the Board "must retain the right to summarily dismiss its President when it no longer has confidence in him." (Petition, p. 10) Yet, there is absolutely no reason given for this obviously falacious attitude. Defendants would thus deny plaintiff all rights, both contractual and constitutional. This Court has consistently rejected the possibility of such arbitrary action by the government, be it State or Federal. This argument presents absolutely nothing for this Court to consider. Certainly, it is within the power of the Board to determine how often it will review the relationship with its President. It need not enter into a two-year employment contract as it chose to do. Having made that determination, it must live with it.

In attempting to conjure the familiar "parade of horribles" which will follow the implementation of the decision of the Court of Appeals, none of which is factually founded, defendants argue that such implementation will force the Board to accept a President with whom it can no longer work in carrying out its duties. (Petition, p. 10) In support of this position, defendants posit the proposition that the president's "position vis-a-vis the board is a close and intimate working relationship requiring a high degree of personal loyalty and confidence." (Petition, p. 9) There is nothing in the record to support this proposition other than defendants' self-serving arguments. This is exactly what the Court of Appeals referred to when it noted in its opinion that the record at this state of the litigation does not clearly define the working relationship between plaintiff and defendants. It does not indicate how closely plaintiff had to follow the dictates of the Board, how much power he had to formulate educational policy, and how much ability he had to debate or discuss with Board members on matters of policy. Petitioners assume that the only acceptable relationship is one of master and servant, where the servant constantly submits to the master at all times. The record does not indicate how a hearing procedure would interfere with the discretion of the Board in hiring and firing personnel. The record does indicate, without doubt, that defendants have in fact instituted just such a hearing procedure in their Policies and Procedures which they now contend would constitute a complete disruption of their ability to operate. Fair procedures are always distasteful to persons who want to bring about an unfair result.

The lack of evidence available to support a full exploration of these issues in this context demonstrates the inadvisability of granting certiorari in this case. This record, relatively bare of such supporting data, would not provide this Court with the materials with which to make an informed decision as to the competing interests which defendants assert must be balanced. There is, in short, nothing in this record which would justify this Court's reaching any conclusion different than that reached by the Court of Appeals—the rights of plaintiff are the same as the rights of classroom teachers generally.

Since defendants have in effect conceived that this matter should not be dismissed, and that plaintiff does in fact have rights to freedom of speech and due process, there is no reason that this Court should take this case at this time. The matter will have to be remanded to the District Court for further proceedings in any event. Further, defendants themselves have declared that they, by their own actions and attitudes, have made moot the very point which they seek to present to this Court. They have declared, in their Petition, as well as elsewhere throughout the record, that they will grant plaintiff no hearing, and will never, in any circumstances, reinstate plaintiff to his position as President of Prairie State Junior College. Thus, there is in reality, nothing for this Court to consider at this time. What defendants ask this Court to do is to render an advisory opinion on the kind of hearing to which school administrators are entitled, in a fact situation in which such a determination is not necessary for a resolution of the case.

Finally, defendants have pointed to absolutely no cases which support their position. No Court of Appeals or District Court has rendered an opinion which would support their position. For all that appears here, the decisions of the Circuits in this matter are uniform. Until such time as it can be demonstrated that such a conflict has arisen, the issue is not yet ripe for determination by this Court. Until some lower Court has considered arguments similar to those advanced by defendants here, and found those arguments to be persuasive in a discrete fact situation, there is no reason for this Court to consider them, particularly where the record here does not contain sufficient factual material to support them. Petitioners' argument is really summed up in their unwillingness to correct a gross injustice which they brought about. They want this Court to say that a college president under contract has no constitutional rights.

## CONCLUSION.

For the foregoing reasons, the Petition for a Writ of Certiorari should be denied, or in the alternative, such Petition for a Writ of Certiorari should be granted, and the opinion of the Court of Appeals summarily affirmed on the basis of the opinion handed down by that Court.

Respectfully submitted,

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*Attorneys for Respondent*

In The

# Supreme Court of the United States

October Term, 1973

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BOARD OF JUNIOR COLLEGE DISTRICT NO. 515, COUNTIES OF COOK AND WILL AND STATE OF ILLINOIS, a body politic and corporate, and JAMES GRIFFITH, ANTHONY HANNAGAN, DORIS HILL, WILLIAM JACKSON, LESTER KLOSS, SHIRLEY MELECKER AND THOMAS PORTER, individually and as members of the Board of Trustees,

*Petitioners,*

vs.

RICHARD W. HOSTROP,

*Respondent.*

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## RESPONDENT'S BRIEF IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

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Respondent prays that the requested writ of certiorari not issue to review the judgment of the United States Court of Appeals for the Seventh Circuit entered on December 21, 1972.

## STATEMENT OF THE CASE.

In July, 1967, Dr. Richard Hostrop was hired by the Board of Junior College District No. 515 as Chief Administrative Officer and President of Prairie State College, and was given a written contract for one year. His employment was regularly extended by written contract. In fact, shortly before the present dispute arose, a two-year contract was abrogated and replaced by a new two-year contract at a higher salary, extending through June, 1972. Obviously, at that time defendants were quite pleased with respondent's performance of his duties.

In May, 1971, plaintiff, acting in his official capacity and fully within his authority, circulated a confidential memorandum to the administrative staff of Prarie State, simply for the purpose of study and subsequent comment at an upcoming Cabinet meeting. The memorandum proposed, only as a topic for discussion, the proposition that the school discontinue its existing Ethnic Studies Department, and reassign the relevant ethnic programs to other academic departments. For example, ". . . Afro-American History would be taught within the History Department, Ethnic Art courses within the Art Department, 'Black Psychology' taught within the Psychology Department, Afro-American Communications taught within the English Department, Swahili taught within the Foreign Languages Department, etc." The memorandum also proposed that the Director of Ethnic Studies be responsible to serve as a resource person to the entire academic community.

Without the knowledge or approval of respondent, some unknown person caused the memorandum to be published in the school newspaper. At a subsequent Board Meeting, it was publicly stated to the Board that it had no plan to change the Ethnic Studies program for the upcoming school year. At this time, certain members of the Board of Trustees questioned plaintiff's right to compose the memorandum. Almost immediately thereafter, plaintiff was called into the office of a newly appointed and uninformed special counsel to the board and advised that he had the choice of resigning or being fired, that his contract was terminated, that no hearing would be permitted, and that no specific charges would be given, although allegedly one of the reasons for his termination was the circulation of the memorandum. Plaintiff refused to resign, demanded proper notice of formal charges and a hearing in accordance with the Board's long established Policies and Procedures. On July 23, 1970, without notice or charges of any kind to plaintiff, his employment was terminated at a special board meeting. It was only after this action had taken place that plaintiff's attorney was given a statement of the alleged reasons for plaintiff's termination, none of them well founded. The Board continued to refuse to grant plaintiff a hearing on any of the alleged reasons for his termination. It still persists in this attitude.

Plaintiff's suit, brought under 42 U.S.C. §1983, was dismissed by the District Court, on motion and without a trial, for alleged failure to state a claim upon which relief can be granted. The basis for this conclusion was that "the nature of the position of a college president is such that the board must have the 'confidence' in and the 'personal loyalty' of the president," and thus, the plaintiff had "no first amendment rights that were violated." The district court also held that respondent had no due process rights which would entitle him to a hearing.

The Court of Appeals for the Seventh Circuit reversed and remanded, holding that plaintiff had indeed stated a

## REASONS FOR REFUSING THE WRIT.

Apparently, defendants have abandoned their claims that plaintiff has no First Amendment rights, and now ask this Court to grant their request for a Writ of Certiorari based solely upon the form of hearing which the Court of Appeals mandated in its opinion in this matter. Defendants object to the requirement that they be required to hold "a full trial-type hearing before an 'apparent impartial tribunal.'" (Petition, page 8) The basis for this objection is that to require such a hearing in the case of chief administrators "would create havoc and uncertainty in the nation's schools." (Petition, p. 9) Plaintiff respectfully submits that the issue sought to be raised by defendants here is insubstantial, and does not present a ground upon which this Court should grant its writ. Furthermore, the record in this case does not present a proper vehicle for the exploration of such an issue, should that issue be deemed substantial.

Defendants' argument amounts to nothing more than an assertion that school boards across the country should be given carte blanche to discharge their chief administrative officials in disregard of rudimentary elements of due process. In the recent cases of *Board of Regents* v. *Roth*, 408 U.S. 564 (1972) and *Perry* v. *Sinderman,* 408 U.S. 593 (1972), this Court fully explored the rights of academic personnel in regard to freedom of speech and due process. The only distinguishing factor between this case and those is that here the plaintiff is the chief administrative official rather than a teacher. That distinction is one only of degree, not of kind, and presents no new considerations which should impel this Court to re-examine again those guidelines which it so clearly set forth in the *Roth* and *Sinderman* cases. What was said there is dispositive of this matter, as correctly determined by the Court of Appeals.

Defendants proceed on the erroneous grounds that the nature of the protection afforded to individuals rests entirely upon their status. This Court has rejected that contention. It is the form of interest possessed by the plaintiff which has been infringed by defendant which is determinative. As was said in *Perry* v. *Sinderman, supra,*

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As was found in *Perry,* plaintiff clearly has a property interest here which entitles him to due process protection. He was working on a written contract, which gave him specific entitlement to employment for a specific period of time. This contract had recently been extended at increased compensation. It is this interest which is being protected, not the position occupied. This was also emphasized in *Roth,* where the Court said:

> "Before a person is deprived of a protected interest, he must be afforded opportunity for some kind of a hearing 'except for extraordinary situations where some valid governmental interest is at stake that justifies postponing the hearing until after the event.' *Boddie* v. *Connecticut,* 401 U.S. 371, 379, 91 S. Ct. 780, 786, 28 L. Ed. 2d 113. 'While "[m]any

> controversies have raged about . . . the Due Process Clause," . . . it is fundametal that except in emergency situations (and this is not one) due process requires that when a State seeks to terminate [a protected] interest . . . it must afford "notice and opportunity for hearing appropriate to the nature of the case" *before* the termination becomes effective.' *Bell* v. *Burson,* 402 U.S. 535, 542, 91 S. Ct. 1586, 1591, 29 L. Ed. 2d 90." 408 U.S. at ........,92 S. Ct. at 2705 (fn. 7)

Contrary to the assertions of defendants, a hearing prior to the decision to terminate is the rule, rather than the exception. A subsequent hearing is to be countenanced only when there is some extraordinary situation where some valid governmental interest is at stake. There has been no showing that this case presents such an extraordinary situation which would require postponing the hearing until after the damage has been done. Defendants have presented no reasons why this Court should consider departing from that well-established rule in situations involving run-of-the-mill disputes between school boards and administrative personnel.

In *Perry* it was held that proof of a property interest such as contractual entitlement to a job position "would obligate college officials to grant a hearing at his request, where he could be informed of the grounds for his nonretention and challenge their sufficiency." 408 U.S. at ......, 92 S. Ct. at 2708.

The only thing which has been added to this requirement by the Court of Appeals is the stipulation that the hearing be held "before a tribunal possessing apparent impartiality."' It is difficult to conceive how defendants could object to such a fundamentally sound requirement. Surely they do not ask this Court to sanction the holding of a hearing by a biased tribunal which has already predetermined the case. To so hold would destroy the reasons for holding the hearing in the first place. It would sanction the existence of a kangaroo court. If a hearing is to be held prior to the taking of the proposed action, there must be a reasonable chance on the part of the employee to convince the decision-makers that the proposed action ought not to be taken. Anything less would be nothing more than paying lip-service to the Constitution while ignoring its substantive protections.

*The lack of good faith of defendants herein is amply demonstrated even in their Petition for Writ of Certiorari, where they state that "there is no possibility that the plaintiff could be reinstated."* (Petition, p. 10) This shows that at no time had defendants ever considered granting plaintiff the constitutional rights to which he was entitled. They had made up their mind, and nothing that could be done or said would change their minds. Even proof that their reasons for discharge were totally unfounded and erroneous would not serve to grant plaintiff his contractual and constitutional rights.

While tacitly recognizing that plaintiff does in fact have First Amendment rights to freedom of speech, defendants reiterate their previous arguments that the Board "must retain the right to summarily dismiss its President when it no longer has confidence in him." (Petition, p. 10) Yet, there is absolutely no reason given for this obviously falacious attitude. Defendants would thus deny plaintiff all rights, both contractual and constitutional. This Court has consistently rejected the possibility of such arbitrary action by the government, be it State or Federal. This argument presents absolutely nothing for this Court to consider. Certainly, it is within the power of the Board to determine how often it will review the relationship with its President. It need not enter into a two-year employment contract as it chose to do. Having made that determination, it must live with it.

In attempting to conjure the familiar "parade of horribles" which will follow the implementation of the decision of the Court of Appeals, none of which is factually founded, defendants argue that such implementation will force the Board to accept a President with whom it can no longer work in carrying out its duties. (Petition, p. 10) In support of this position, defendants posit the proposition that the president's "position vis-a-vis the board is a close and intimate working relationship requiring a high degree of personal loyalty and confidence." (Petition, p. 9) There is nothing in the record to support this proposition other than defendants' self-serving arguments. This is exactly what the Court of Appeals referred to when it noted in its opinion that the record at this state of the litigation does not clearly define the working relationship between plaintiff and defendants. It does not indicate how closely plaintiff had to follow the dictates of the Board, how much power he had to formulate educational policy, and how much ability he had to debate or discuss with Board members on matters of policy. Petitioners assume that the only acceptable relationship is one of master and servant, when the servant constantly submits to the master at all times. The record does not indicate how a hearing procedure would interfere with the discretion of the Board in hiring and firing personnel. The record does indicate, without doubt, that defendants have in fact instituted just such a hearing procedure in their Policies and Procedures which they now contend would constitute a complete disruption of their ability to operate. Fair procedures are always distasteful to persons who want to bring about an unfair result.

The lack of evidence available to support a full exploration of these issues in this context demonstrates the inadvisability of granting certiorari in this case. This record, relatively bare of such supporting data, would not provide this Court with the materials with which to make an informed decision as to the competing interests which defendants assert must be balanced. There is, in short, nothing in this record which would justify this Court's reaching any conclusion different from that reached by the Court of Appeals—the rights of plaintiff are the same as the rights of classroom teachers generally.

Since defendants have in effect conceded that this matter should not be dismissed, and that plaintiff does in fact have rights to freedom of speech and due process, there is no reason that this Court should take this case at this time. The matter will have to be remanded to the District Court for further proceedings in any event. Further, defendants themselves have declared that they, by their own actions and attitudes, have made moot the very point which they seek to present to this Court. They have declared, in their Petition, as well as elsewhere throughout the record, that they will grant plaintiff no hearing, and will never, in any circumstances, reinstate plaintiff to his position as President of Prairie State Junior College. Thus, there is in reality, nothing for this Court to consider at this time. What defendants ask this Court to do is to render an advisory opinion on the kind of hearing to which school administrators are entitled, in a fact situation in which such a determination is not necessary for a resolution of the case.

Finally, defendants have pointed to absolutely no cases which support their position. No Court of Appeals or District Court has rendered an opinion which would support their position. For all that appears here, the decisions of the Circuits in this matter are uniform. Until such time as it can be demonstrated that such a conflict has arisen, the issue is not yet ripe for determination by this Court. Until some lower Court has considered arguments similar to those advanced by defendants here, and found those arguments to be persuasive in a discrete fact situation, there is no reason for this Court to consider them, particularly where the record here does not contain sufficient factual material to support them. Petitioners' argument is really summed up in their unwillingness to correct a gross injustice which they brought about. They want this Court to say that a college president under contract has no constitutional rights.

## CONCLUSION.

For the foregoing reasons, the Petition for a Writ of Certiorari should be denied, or in the alternative, such Petition for a Writ of Certiorari should be granted, and the opinion of the Court of Appeals summarily affirmed on the basis of the opinion handed down by that Court.

Respectfully submitted,

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*Attorneys for Respondent*

# Appendix D

## Back to the United States District Court, Northern District of Illinois, Eastern Division—September 23, 1974

# APPENDIX B

## Opinion Of The United States District Court For The Northern District Of Illinois, Upon Trial Of The Case, September 23, 1974

AUSTIN, *District Judge.*

## MEMORANDUM and JUDGMENT ORDER

On July 23, 1970, Plaintiff Richard Hostrop was discharged as President and chief administrative officer of Prairie State Junior College in Chicago Heights, Illinois. In early 1971, Hostrop brought this lawsuit, seeking monetary, declaratory, and injunctive relief against Defendants, members of No. 515 Junior College Board of Directors. Specifically, Plaintiff maintained that he was unconstitutionally denied a Board hearing before termination. He further contended that his severance resulted solely because of his preparation and circulation of a highly controversial memorandum criticizing a Board-approved Ethnic Studies program and that, consequently, the dismissal was unjustified, a breach of his employment contract, and a violation of his first amendment right to freely speak his opinions.

This matter first came before me in February, 1972, when I dismissed the amended complaint for failure to state a claim upon which relief can be granted. *Hostrop v. Board of Junior College District No. 515*, 337 F.Supp. 977 (N.D. Ill. 1972). Assuming the accuracy of his well-pleaded allegations for purposes of my decision, I found that, due to his high-level administrative position and his intimate working relationship with the Board, Hostrop could not receive first or fourteenth amendment protection for public statements that were critical of his employer. On appeal, the Seventh Circuit disagreed and, on December 21, 1972, reversed and remanded this action, holding that the amended complaint presented viable contractual and constitutional claims.[1] *Hostrop v. Board of Junior College District No. 515*, 471 F.2d 488 (7th Cir. 1972).

Upon remand, I conducted a seven-day hearing at which the parties submitted evidence and arguments in support of their various contentions. After careful consideration, I conclude that Plaintiff has not proven the essential allegations of his amended complaint and that judgment must be entered for Defendants.

## I. *HEARING RIGHTS AND WAIVER*

First, Hostrop has not shown that he merited a pretermination hearing. On appeal, the Seventh Circuit held that Plaintiff could recover on his due process-denial claim only if he proved that his particular circumstances gave rise to a "liberty" or "property" right warranting constitutional protection. On the basis of the evidence before me, he has not demonstrated the existence of either right. Since Hostrop made public the Board's grounds for discharge when it had no intention to do so itself, I find that his "standing in the community" was not damaged by any action of the Board. *See* 471 F.2d at 494. *See also Shirck v. Thomas,* 486 F.2d 691 (7th Cir. 1973); *Jafree v. Scott,* 372 F.Supp. 264, 270 (N.D. Ill. 1974); *Defendants' Post-Trial Memorandum 8-11.* Moreover, because Plaintiff deceptively deleted a material provision of his proposed employment contract and misled Defendants concerning his extensive outside involvements, I further find that he had no reasonable or "legitimate claim of entitlement to his job." 471 F.2d at 494. *See Defendants' Post-Trial Memorandum 11-16.* It follows that, in this instance, due process does not demand a dismissal hearing. *See, generally, Birdwell v. Hazelwood School District,* 491 F.2d 490 (8th Cir. 1974).

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[1] Plaintiff insists that the appellate court opinion held that his allegations were factually well-founded and actually specified the procedures due him. This argument is spurious and must be rejected. The Circuit decision only discussed Defendants' attack upon the legal sufficiency of Hostrop's claims. Fed. R. Civ. Pro. 12(b)(6). By its carefully-delineated terms, the appellate ruling merely asserted that Plaintiff's amended complaint was actionable. The Court did not—as it properly could not—substantively evaluate these charges. In remanding "for the consideration of the causes of action the Plaintiff has pleaded," the Seventh Circuit remitted this litigation to me for factual findings and legal conclusions and not necessarily, as Hostrop seems to suggest, for the entry of judgment in his favor. 471 F.2d at 495.

Even allowing Hostrop a hearing right, I find that he waived it by refusing to attend the July 23, 1970 Board meeting at which he was discharged. The evidence established that his attendance was required by school rules and policy, that he knew of the pendency and substance of the meeting, that he had ample advance notice of the charges against him, and that he failed to be present on advice of counsel. Moreover, I find that the Board was prepared to undertake an informal impartial hearing into its complaints against him. In this context, Plaintiff's voluntary absence from a properly-noticed Board session constitutes a deliberate waiver of any due process rights he may have possessed. *See, generally, Johnson v. Zerbst,* 304 U.S. 458, 464 (1938); *Birdwell, supra. See also Defendants' Post-Trial Memorandum 17-29.*

## II. *FIRST AMENDMENT AND CONTRACTUAL RIGHTS*

Next, I find that Hostrop's dismissal was not motivated by his expression of views in the Ethnic Studies memorandum. I conclude that, as a matter of fact, his termination was fully justified and was the culmination of a series of confrontations and incidents which include the Savage and Cooke problems, the Perkins and Will affair, the timing and concealment of the Ethnic Studies memorandum, Mrs. Pommer's salary, the operation of the Storefront Academy, his unilateral contract deletion, his misinformation about his non-college activities, and his failure to provide the Board with requested financial reports. These events substantially impeded the Board's normal functions, critically impaired the personal working relationship between the parties, and completely destroyed the Board's confidence in Plaintiff's loyalty and abilities. Hostrop's discharge, therefore, was neither a deprivation of his free speech rights nor a breach of contract. *See Defendants' Post-Trial Memorandum.*

## III. *COUNT II CONSPIRACY CHARGE.*

Plaintiff's Count II conspiracy charge is without foundation and unsupported by any persuasive evidence.

## IV. *JUDGMENT ORDER*

After weighing all relevant evidence and the contentions of the parties, I find that Plaintiff was not entitled to a pre-dismissal hearing, that he waived any hearing right by failing to attend the July 23, 1970 Board meeting, and that his termination was justified and not the result of an unlawful deprivation of his first amendment privileges.

On the law and facts, judgment must be rendered in favor of Defendants.

Case dismissed.

/s/ JUDGE RICHARD B. AUSTIN
Judge, United States District Court

DATED: September 23, 1974

UNITED STATES DISTRICT COURT, NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

Name of Presiding Judge, Honorable RICHARD B. AUSTIN

Cause No. 71 C 147

Date January 18, 1974

Title of Cause Hostrop v. Board of Junior College District No. 515, et al.

Brief Statement of Motion Plaintiff's Motion for Summary Judgment

The rules of this court require counsel to furnish the names of all parties entitled to notice of the entry of an order and the names and addresses of their attorneys. Please do this immediately below (separate lists may be appended).

Names and Addresses of moving counsel

James Pappas, Esq.
1492 Aberdeen St.
Chicago Heights, Ill. 60411

and Elmer Gertz, Esq.
120 S. La Salle St., Suite 1805
Chicago, Illinois 60603

Representing Plaintiff

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Names and Addresses of other counsel entitled to notice and names of parties they represent.

Anthony Scariano, Esq.
20200 Ashland Avenue
Chicago Heights, Illinois 60411

Defendants.

Plaintiff's Motion for Summary Judgment is denied. A reading of the pleadings, Plaintiff's deposition, and the affidavits filed by the parties and their attorneys, coupled with the decision in Hostrop v. Board of Junior College District 515, 471 F.2d 488 (7th Cir. 1972), indicates to this Court that there are several genuine issues of fact which are material to the outcome of the instant case.

Among those issues are: 1) what is the nature of the relationship of the Plaintiff to the Defendants in the Board's decision making process, in terms of his right to notice and opportunity to be heard prior to termination of his employment contract; and 2) assuming arguendo Plaintiff is entitled to notice and opportunity to be heard, did he waive those rights? In addition to these, other substantial issues of fact are presented by the parties' affidavits.

As a result, this Court is unable to determine whether, as a matter of law, Plaintiff is entitled to judgment in his favor on the issue of liability. The Motion for Summary Judgment must therefore be denied.

SO ORDERED.

Austin, J.

Hand this memorandum to the Clerk.
Counsel will not rise to address the Court until motion has been called.

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# Appendix E

# Up Again to the United States Court of Appeals for the Seventh District—September 24, 1975

# APPENDIX A

## Opinion Of The United States Court Of Appeals For The Seventh Circuit
## September 24, 1975

Before FAIRCHILD, *Chief Judge*, SWYGERT and TONE, *Circuit Judges*.

TONE, *Circuit Judge*. Plaintiff, a former president of a public junior college who was discharged by the college board in July, 1970, brought this civil rights action, alleging that he was wrongfully terminated in violation of his federal constitutional rights of free speech and procedural due process and his contract rights. In a bench trial the District Court found the issues in favor of the defendants. We hold that the District Court's findings of fact on the first amendment issue are not clearly erroneous, but that plaintiff's procedural due process right was violated by the failure of the defendants to afford him a hearing and he is therefore entitled to recover damages against the board but not the individual defendants, who are protected by official immunity. We remand for a hearing on damages, which need not be before a jury.

In his amended complaint against the board and its members, plaintiff asserted, in Count I, a claim for the alleged infringements of his rights described above and, in Count II, a claim for conspiracy to deprive him of those rights. The District Court dismissed this complaint for failure to state a claim upon which relief could be granted, but this court reversed that judgment and remanded for trial. *Hostrop v. Board of Junior College Dist. 515*, 471 F.2d 488 (7th Cir. 1972), *cert. denied*, 411

U.S. 967 (1973) (*Hostrop I*). On the eve of trial the District Court allowed further amendment of the complaint to add a Count III, specifically alleging breach of plaintiff's contract rights. The court refused, however, to permit a jury trial of that claim, no jury demand having been filed for the original claims.

## I.

## First Amendment Rights

*Hostrop I* held that plaintiff had stated a violation of his first amendment rights by his allegations that the primary reason for his dismissal was his writing of the memorandum on the ethnic studies program described in that opinion. 471 F.2d at 491-494. The District Court found as a fact, however, as follows:

> ". . . I find that Hostrop's dismissal was not motivated by his expression of views in the Ethnic Studies memorandum. I conclude that, as a matter of fact, his termination was fully justified and was the culmination of a series of confrontations and incidents which include . . . the timing and concealment of the Ethnic Studies memorandum [and seven other listed incidents]."

Even if the exercise of a right protected by the first amendment were only one of several reasons for dismissal, the dismissal would be unlawful, so we consider that possible reason without reference to others. As we construe the District Court's findings, however, plaintiff was not dismissed because of his exercise of first amendment rights. The court's phrase, "the timing and concealment of the Ethnic Studies memorandum," read in the light of the evidence, must be taken as referring to the circumstances surrounding the disclosure of the memorandum to the board: Plaintiff initially gave copies of the memorandum only to his "cabinet," and instructed them not to discuss it with anyone else. Only when he learned that a copy of the memorandum had found its way into the hands of the student newspaper and was to be published the next day did he furnish copies to the board members. The evidence indicates, and the District Court could properly have found, that the board members were disturbed because a memorandum proposing the repudiation of their commitment to continue the ethnic studies program for another year was withheld from them until the fortuitous leak to the newspaper compelled its disclosure to them, which occurred less than three weeks before the date proposed in the memorandum for effectuation of this highly controversial action; and this "timing and concealment" rather "his expression of views" in the memorandum constituted one of the reasons for the board's action. This we think is the meaning of the District Court's finding, which we cannot say is clearly erroneous. These facts do not show a violation of plaintiff's first amendment rights.

## II.

## Procedural Due Process Right

*Liberty Right*

This court held in *Hostrop I* that plaintiff had stated a deprivation of liberty under *Board of Regents v. Roth*, 408 U.S. 564 (1972), in his allegation that the board had damaged his reputation by charging him with lack of veracity, 471 F.2d at 494, but the District Court found from the evidence that Hostrop himself had made public the board's charges when it had no intention of doing so. The court held that his standing in the community was therefore not injured by any action of the board, if it was damaged at all. We agree. Plaintiff's argument that he had to disclose the reasons to quell the rumors which were circulating does not establish that his reputation was injured by board action. Once the board decided to terminate plaintiff, the most it could do to prevent injury to his reputation was maintain silence as to its reasons. See *Shrick v. Thomas*, 486 F.2d 691, 693 (7th Cir. 1973). The board is not responsible for plaintiff's decision that it would be better for his reputation to publish the reasons.

### *Property Right*

*Hostrop I* also held that plaintiff's complaint alleged facts showing a deprivation of a property right. 471 F.2d at 494. The District Court found, however, that plaintiff had no legitimate claim of entitlement to his job because he had deceived the board members by omitting from the form of renewal contract he submitted to them for approval a clause the earlier contract had contained requiring him to devote full time to his job as president. Defendants assert, as additional reasons that plaintiff does not have such a claim, that plaintiff's contract was void because its term exceeded one year, and that the deletion of the full-time clause prevented the meeting of minds requisite to the making of a contract.

We think plaintiff had a claim of entitlement amounting to a property interest within the meaning of *Board of Regents v. Roth, supra*, 408 U.S. at 577-578, and *Perry v. Sindermann*, 408 U.S. 593, 601-602 (1972), even assuming that, as the District Court found, he deceived defendants by the manner in which he submitted the form for the new contract. Apart from the fact that the earlier contract, covering the period July 1, 1969 to June

30, 1971, would still have been in effect if the new contract had not superseded it, the new contract was at most voidable for fraud, not void. So long as there was a genuine dispute on the issue of fraud, plaintiff had a claim of entitlement that gave him a right to a hearing. The same is true with respect to the issue raised by the contention that there was no meeting of the minds, assuming that issue to be analytically different from the fraud issue.

Defendants' argument that both contracts were void because their terms exceeded one year is also without merit. Even if there were a one-year limitation under Illinois law, a contract would not, we think, be invalid in its entirety but only for the period in excess of one year. But our examination of Illinois law persuades us that the making of a contract for a term in excess of one year was within the authority of the board.

In arguing that both plaintiff's original and superseding two-year contracts were void *ab initio*, defendants rely on Illinois cases holding it beyond the power of a school board to employ teachers for a period beyond a school year, a rule originally based on a construction of the statute, *Stevenson v. School Directors*, 87 Ill. 255, 257-258 (1877), and on the principle that one board should not be able to bind a later board, *id.* at 258-259; *Davis v. School Directors*, 92 Ill. 293, 296 (1879). In the case at bar, the board, prior to the April 1970 board election, purported to extend plaintiff's contract until June 30, 1972, or two years beyond its term. After the mid-April election, the new board did not object to plaintiff's new contract and permitted him, on July 1, 1970, to commence serving under it. This adoption of the contract by the new board meant that plaintiff had a valid contract at least through June 30, 1971. This is so regardless of whether plaintiff was working under his original (1969-1971) or his superseding (1970-1972) contract.

Moreover, we think that the board was empowered to enter into contracts of a duration of longer than one year. In 1927, the Illinois General Assembly conferred on school boards the power to contract with teachers, principals, and superintendents for a period of three years, after expiration of a two-year probationary period. See *Sloan v. School Directors of District No. 22*, 373 Ill. 511, 26 N.E.2d 846 (1940). In *Sloan* the Illinois Supreme Court determined that the *Stevenson* and *Davis* cases, *supra*, were no longer applicable because "they were decided before the enactment of" the 1927 law. 373 Ill. at 514, 26 N.E.2d at 847. Subsequently the Illinois Supreme Court said of the statute: "The purpose of the General Assembly in enacting the statute is apparent, for it is in the best interest of the schools that competent and capable teachers be continued in their employment. It adds to the stability of the employment and works to the advantages not only of the public but to the teachers and those employed with the administration of school affairs." *Pack v. Sporleder*, 394 Ill. 130, 140, 67 N.E. 2d 198, 203 (1946). The law was later changed to enable school boards, after a probationary period, to contract for "contractual continued service." See Ill. Rev. Stat. ch. 122, § 23-11 (1969).

The tenure statute does not apply to a president of a college, but it was against the background of this statute that the Illinois General Assembly created the Junior College Boards by the Public Junior College Act, Ill.

Rev. Stat. ch. 122, §§ 101-1, *et seq.* (1969).[1] Rather than determining the tenure policy for the junior colleges, as it had done for the public schools, the General Assembly provided that the board itself, which appoints the chief administrative officer, *id.* § 103-26, should "establish tenure policies for the employment of teachers and administrative personnel," *id.* § 103-32. We think that the General Assembly intended, in using this language, not to reinstate for junior colleges the rule of the *Stevenson* and *Davis* cases, but to give the board authority to establish its own policies with respect to tenure, which in its broadest sense includes the limited tenure afforded by a contract calling for a term in excess of one year.

The defendant board has in fact established tenure and employment policies in its Policies and Procedures, paragraphs 4.35, 4.25, and 2.20. Teachers are appointed annually until they receive tenure and then on a continuous basis. Administrative personnel other than the president are appointed subject to the annual recommendation of the college president and approval of the board. The president can be appointed for more than one year:

> "The President of the College is selected by the Governing Board and under whatever terms are mutually agreed upon at the time of appointment. It will be the duty of the Board to renew the contract of the President of the College or to notify him in writing prior to the first of January in the last

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[1] Here and elsewhere in this opinion we refer to the 1969 edition of the Illinois Revised Statutes because that edition contained the version of the School Code in force at the time of the events in issue here. The changes reflected in the present law, Ill. Rev. Stat. ch. 122, §§ 101-1, *et seq.* (1973) are not material here. The references to "Junior Colleges" have for the most part been changed to references to "Community Colleges."

> year of his incumbency that his services will not be required after the expiration of his present contract.
>
> "The compensation of the President of the College will be fixed by the Board at the time he is appointed. By mutual consent the compensation of the President may be adjusted before the start of any academic year." Policies and Procedures 2.20.

We therefore conclude that under the enabling statute and the board's own rules adopted pursuant to the statute, the board had authority to contract with the president of the college for a period of more than one year.

*Denial of Hearing*

Our review of the evidence leaves us with the definite and firm conviction that plaintiff was never offered a fair hearing on termination, and that, in fact, the board prejudged his case before making any hearing available to him. There can be no real dispute that before the special session of the board on July 23, 1970, when plaintiff was to be afforded a hearing, the board had already decided to terminate him, and had in fact made a commitment to another person to hire that person as interim president. The board having prejudged the matter of plaintiff's termination before the July 23 meeting, and being no longer therefore "a tribunal possessing apparent impartiality," as required by *Hostrop I*, 471 F.2d at 495, plaintiff did not waive his right to a hearing by absenting himself from that meeting.

The termination of plaintiff's employment without affording him the notice and hearing required by *Board of Regents v. Roth* and *Perry v. Sindermann* is actionable despite the District Court's findings and conclusion, which we do not disturb, that the conduct of plaintiff was such as to constitute cause under state law for termination of his employment. This is made clear by the last sentence of footnote 15 of *Hostrop I*, where the court recognized that despite the existence of "grounds to break an employment contract," doing so "by violating an employee's due process rights to notice and hearing" is nevertheless actionable. 471 F.2d at 494 n. 15.

## III.

## The Conspiracy Charge

Plaintiff contends that, as alleged in Count II of his amended complaint, the board members, in addition to violating his civil rights, conspired to do so in violation of 42 U.S.C. § 1983. The District Court, having found no violation of plaintiff's rights, also found against plaintiff on the conspiracy issue.

The doctrine of civil conspiracy extends liability for a tort, here the deprivation of constitutional rights, to persons other than the actual wrongdoer, W. Prosser, *The Law of Torts* § 46 at 293 (4th ed. 1971), but it is the acts causing damage to the plaintiff that give rise to liability for damages, not the conspiracy itself.

> "The damages for which recovery may be had in a civil action is not the conspiracy itself but the injury to the plaintiff produced by specific overt acts. [Citations omitted.] The charge of conspiracy in a civil action is merely the string whereby the plaintiff seeks to tie together those who, acting in concert, may be held responsible for any overt act or acts." *Rutkin v. Reinfeld*, 229 F.2d 248, 252 (2d Cir. 1956), *cert. denied*, 352 U.S. 844 (1956).

As stated in *Jones v. Bales*, 58 F.R.D. 453, 458 (N.D. Ga. 1972), *aff'd*, 480 F.2d 805 (5th Cir. 1973) (per curiam):

> "For a claim under 42 U.S.C. § 1983, a conspiracy is not a vital element. Nevertheless, a conspiracy may be used as the legal mechanism through which to impose liability on each and all the defendants without regard to the person doing the particular act. *Mizell v. North Broward Hosp. Dist.*, 427 F.2d 468, 472-473 (5th Cir. 1970); *Nesmith v. Alford*, 318 F.2d 110, 126 (5th Cir. 1963) [*cert. denied*, 375 U.S. 975 (1964)]."

In the case at bar plaintiff has shown that defendants agreed and acted in concert in denying plaintiff a hearing. Indeed a board is incapable of acting in any other manner. Each defendant, however, is still only liable for the overt act of depriving plaintiff of his property interest without a hearing, which is the same liability that exists under the substantive charge of Count 1. The conspiracy count thus adds nothing to the substantive count.

## IV.

## Relief For Due Process Violation

### *The Defendant Board*

The defendant board, as distinguished from its members, "is a body politic and corporate" which "may sue and be sued in all courts and places where judicial proceedings are had," Ill. Rev. Stat., ch. 122, § 103-11 (1969); that is, it is a municipal corporation, *Norfolk & W. Ry. Co. v. Board of Education*, 114 F.2d 859, 863 (7th Cir. 1940) (relying upon *Board of Education v. Upham*, 357 Ill. 263 191 N.E. 876 (1934) ).[2] As such it is not amenable to suit under 42 U.S.C. § 1983. *City of Kenosha v. Bruno,* 412 U.S. 507, 513 (1973); *Monroe v. Pape,* 365 U.S. 167, 187-192 (1961); see *Strickland v. Inlow,* 485 F.2d 186, 191 (8th Cir. 1973), *rev'd on other grounds sub nom. Wood v. Strickland,* ..... U.S. ......, 95 S.Ct. 992 (1975). Plaintiff having alternatively invoked 28 U.S.C. § 1331, however, and the requisite jurisdictional amount being concededly present, the board can be sued under that statute.[3] *Calvin v. Conlisk,* ..... F.2d ......, No. 74-1289, Slip Op. pp. 10-14 (7th Cir. June 30, 1975); see *City of Kenosha v. Bruno, supra,* 412 U.S. at 514 (1973) (majority opinion) and 412 U.S. at 516 (concurring opinion of Brennan and Marshall, JJ.); see also Bodensteiner, "Federal Court Jurisdiction of Suits Against 'Non-persons' for Deprivation of Constitutional Rights," 8 Val. U. L. Rev. 215, 224-229 (1974). Accordingly, the board is answerable for the violation of plaintiff's procedural due process right.

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[2] The board in *Aurora Education Ass'n v. Board of Education*, 490 F.2d 431, 435 (7th Cir. 1973), *cert. denied*, 416 U.S. 985 (1974), which the court said was "not a municipal corporation," was organized under an Illinois statute, now Ill. Rev. Stat., ch. 122, § 10-10 (1973), different from the ones under which the boards in this case and the *Norfolk & Western* case were organized.

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[3] The eleventh amendment does not affect this suit. Defendant board has not asserted immunity, and has therefore waived this defense. Moreover, the Illinois legislature, by permitting the board to be sued "in all courts" appears to waive any immunity a board would otherwise have. Finally, the eleventh amendment does not extend immunity to political subdivisions of the state. *Lincoln County v. Luning,* 133 U.S. 529 (1890); *Port of Seattle v. Oregon & W. R. Co.,* 255 U.S. 56, 71 (1921); see *Edelman v. Jordan,* 415 U.S. 651, 667 n. 12 (1974). Compare *Brennan v. University of Kansas,* 451 F.2d 1287, 1290 (10th Cir. 1971), which holds a state university immune under the eleventh amendment because under state law it was an agency functioning as an alter ego of the state. (In Illinois, the Board of Trustees of the University of Illinois is treated as "separate and distinct from the State" and is "no part of the State government." *People v. Barrett,* 382 Ill. 321, 343, 46 N.E. 2d 951, 962 (1943).) See also, *Aerojet-General Corporation v. Askew,* 453 F.2d 819, 829-830 (5th Cir. 1971), *cert. denied,* 409 U.S. 892 (1972). Also compare *Hamilton Mfg. Co. v. Trustees of State Colleges in Colorado,* 356 F.2d 599, 601 (10th Cir. 1966), which was an action on a state debt, and *DeLevay v. Richmond County School Board,* 284 F.2d 340 (4th Cir. 1960), which holds a county school board to be an agency of the state immune under the eleventh amendment.

*The Defendant Board Members*

Shortly before oral argument was held in the case at bar, the Supreme Court handed down its opinion in *Wood v. Strickland, supra*, 95 S.Ct. 992 (1975), which laid down the principles we are bound to apply in determining the individual liability of state officers in the position of the individual defendants here. Although that case dealt with board members' individual responsibility for disciplinary proceedings against students, its discussion of immunity is equally applicable to conduct of board members affecting the rights of teachers and administrators. The Court there held that to be entitled to immunity from individual liability for damages on the ground of good faith for an act violating constitutional rights a board member must meet two tests: First, he must be acting, not "with the malicious intention to cause a deprivation of constitutional rights or other injury to the [plaintiff]," but "sincerely and with a belief that he is doing right." Second, if he meets the first test, he is liable only "if he knew or reasonably should have known" that his act "would violate the constitutional rights" of the plaintiff. *Id.* at 1000-1001.

There is no evidence in the record at bar suggesting that the defendant school board members acted with malicious intent to violate plaintiff's constitutional rights and not sincerely with the belief that they were doing right. The question left after reviewing the facts of record is whether they reasonably should have known that the action they were taking would violate plaintiff's constitutional rights. That question must be answered in the light of the law as it existed in July 1970, when the action was taken. At that time *Pickering v. Board of Education*, 391 U.S. 563, 574-575 (1968), holding that a faculty member could not be dismissed for exercising protected first amendment rights, had been decided, and the defendant board members were chargeable with knowledge of the principle established by that case. Apart from whether they should have known of the applicability of the principle to one in plaintiff's position, a question we need not decide, *Pickering* is not applicable because the District Court has found, in findings we cannot say are clearly erroneous, that plaintiff was not dismissed for exercising first amendment rights.

The constitutional right violated was plaintiff's procedural due process right to a hearing before termination, and it is the status of the law in 1970 with respect to this right upon which the immunity of the board members turns. The first definitive holding that termination of teachers' property interests in their employment contracts with state institutions required due process hearings was *Board of Regents of State Colleges v. Roth, supra*, 408 U.S. 564, 576-578 (1972). Plaintiff does not argue otherwise. His argument is that the board's own written rules, called "policies," required notice and hearing before termination. The "policies" relied upon, however, did not require a pre-termination hearing under the circumstances of this case and therefore did not put the members of the board on notice that plaintiff was entitled to a hearing, even assuming that knowledge of a rule of the board is to be equated with knowledge of a constitutional principle for present purposes. The first, which concerns non-renewal of the president's contract and requires written notice by January 1 of his final year of a decision not to rehire him, applies to terminations on expiration of a contract, not termination for cause, and therefore did not apply to the situation the board thought it was confronted with in July 1970. The second "policy," entitled "Dismissal of Tenured Staff," requires written notice and a hearing, if requested, but does not apply to an untenured administrator such as plaintiff.[4] The board's "policies," therefore, afford no support for plaintiff's contention that the board members reasonably should have known he was entitled to a hearing.

We must accept and apply the principle that a school board member is not "charged with predicting the future course of constitutional law," *Wood v. Strickland, supra*, 95 S.Ct. at 1001, quoting from *Pierson v. Ray*, 386 U.S. 547, 557 (1967). Since, as the Court stated in *Strickland*, "[a] compensatory award will be appropriate only if the school board member has acted with such an impermissible motivation or with such disregard of the student's [or administrator's] clearly established constitutional rights that his action cannot reasonably be characterized as being in good faith," 95 S.Ct. at 1001, no compensatory award can be justified by the evidence in the case at bar. See also *Briscoe v. Kusper*, 435 F.2d 1046, 1058 (7th Cir. 1970), in which we said:

> "Although found unconstitutional by this Court, the practices of the Board were nevertheless within the ambit of permissible discretion as it appeared at that time. . . . Under these circumstances, personal liability for damages should not attach, regardless of whether such state action technically contravened the Fourteenth Amendment."

The defendant board members' defense of immunity from liability for money damages must be sustained.

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[4] Ill. Rev. Stat. ch. 122, § 103-32 (1969) empowers the board "[t]o establish tenure policies for the employment of teachers and administrative personnel." The policy established by the defendant board (Policies and Procedures 2.00) is, "The President of the College serves at the pleasure of the Board."

*Relief*

Having determined that the board's denial of a pretermination hearing was an actionable wrong for which it, but not its individual members, is answerable, we turn to the question of the form and measure of appropriate relief.

Five years have elapsed since plaintiff's employment was terminated. His employment contract, even if it had continued in force, would long since have expired. Under these circumstances, injunctive relief would be manifestly inappropriate, *cf. Zimmerer v. Spencer*, 485 F.2d 176, 179 (5th Cir. 1973), and we do not understand plaintiff to contend otherwise. Nor, in view of our other holdings, is there any reason for a declaratory judgment.

Although we conclude that plaintiff is entitled to damages, decision as to the appropriate measure presents problems. The District Court has found, in findings we cannot say are clearly erroneous, that plaintiff was terminated for reasons amounting to just cause. Given the nature of these findings, *viz.*, that certain conduct of plaintiff identified by the District Court "substantially impeded the Board's normal functions, critically impaired the personal working relationship between the parties, and completely destroyed the Board's confidence in Plaintiff's loyalty and abilities," it is inconceivable that even if plaintiff had been accorded his procedural due process rights he would have been allowed to continue in office. We have already pointed out, in holding that the defendant board members are entitled to immunity, that in failing to give plaintiff a notice and hearing they did not act maliciously and, in view of the state of the law in 1970, could not reasonably have been expected to know that they were violating plaintiff's constitutional rights. In view of all these circumstances, justice would not be served and plaintiff would be given a windfall at the expense of the taxpayers of the school district if we were to hold that he is entitled to the same damages that would be recoverable if the contract had been terminated without just cause, although we recognize that one court has adopted this approach, without, however, much discussion of its reasons, see *Zimmerer v. Spencer, supra*, 485 F.2d at 179. Another court has seen it fit to provide reimbursement up until the time that the constitutional deprivation was adjudicated, see *Horton v. Orange County Bd. of Educ.*, 464 F.2d 536 (4th Cir. 1972), a measure of damages which would render the amount of recovery wholly fortuitous since it would be dependent upon when the District Court could hear the case, and which would encourage dilatory tactics.

The wrong done plaintiff was not the termination of his employment, for that has been determined to have been justified, *cf. Garcia v. Daniel*, 490 F.2d 290 (7th Cir. 1973), but the deprivation of his procedural due process right to notice and a hearing. Plaintiff is entitled to damages for that constitutional violation. Although the amount of damages for such an injury cannot be determined by reference to an objective standard, recovery of non-punitive damages for the deprivation of intangible rights for which no pecuniary loss can be shown are not without precedent. Courts have traditionally assessed such damages for tortious injury. Examples in civil rights litigation include the awarding of damages for the deprivation of voting rights, see *Nixon v. Herndon*, 273 U.S. 536 (1927); see *Wayne v. Venable*, 260 F. 64 (8th Cir. 1919), for the abridgment of equal opportunities to housing, see *Jeanty v. McKey & Poague, Inc.*, 496 F.2d 1119 (7th Cir. 1974); *Seaton v. Sky Realty Co., Inc.*, 491 F.2d 634 (7th Cir. 1974), for illegal arrests, see *Basista v. Weir*, 340 F.2d 74 (3d Cir. 1965); *Rhoads v. Horvat*, 270 F.Supp. 307 (D. Col. 1967), and for violation of the right against unlawful searches and seizures, see *Sexton v. Gibbs*, 327 F.Supp. 134 (N.D. Tex. 1970), *aff'd*, 446 F.2d 904 (5th Cir. 1971), *cert. denied*, 404 U.S. 1062 (1972); *cf. Bell v. Hood*, 327 U.S. 678, 684 (1946). See also *Smith v. Losee*, 485 F.2d 334, 352-353 (10th Cir. 1973) (Doyle, J., dissenting). We think the case at bar presents an analogous damage problem.

The question of damages is an issue of fact which should be decided by the trial court. See *Wayne v. Venable*, *supra*, 260 F. at 66. It is therefore necessary to remand the case for a determination of the damages fairly attributable to the failure to afford plaintiff the due process hearing to which he was entitled. The civil rights cases just cited indicate that the non-punitive damages to be awarded may be special, in the sense that they are related to the particular mental distress or other injury to the plaintiff, and general, in the sense that the damages are inherent in the nature of the wrong. Thus the factors which the trial court should consider in making its award will include the nature of the constitutional deprivation and the magnitude of the mental distress and humiliation suffered by the plaintiff, as well as any other injury caused as a result of being deprived of federally protected rights, but not, in view of *Alyeska Pipeline Service Co. v. Wilderness Society*, 95 S.Ct. 1612 (1975), attorneys' fees. Under the circumstances, plaintiff should also recover his costs, both in the District Court and in this court.

## V.

## Contract Rights

Count III, added to the complaint on the eve of trial, asserts a state-law contract claim against the board. Since damages are measured in the same way under that count and Count I, the two counts are alternatives. We therefore need not rule on liability under Count III unless the District Court erred in striking the jury demand filed with that count, in which case plaintiff would be entitled on remand to a jury trial of the issue of damages.

Plaintiff had not made a jury demand in connection with his original or amended complaints, filed in January and April, 1971. On February 4, 1974, the court set the case for trial on April 29 of that year. On February 20, 1974, over three years after the commencement of the action, plaintiff obtained leave to file an amendment, adding Count III, in which he sought damages for breach of contract and demanded a jury trial. Pursuant to defendants' motion, the court struck the amendment with leave to amend within ten days. Plaintiff did not amend within that time but waited until April 29, 1974, the date set for trial, to seek leave to file a new amendment containing the contract claim and a jury demand. The court granted leave to file the amendment but struck the jury demand as untimely, gave defendants 48 hours to answer, and proceeded to trial on May 2, 1974.

The trial judge may well have had discretion under Rule 15(a), Fed. R. Civ. P., to refuse to allow the amendment on the date set for trial except on condition that the jury demand be withdrawn. Compare *Chicago Pneumatic Co. v. Hughes Tool Co.*, 192 F.2d 620, 631 (10th Cir. 1951); *Parissi v. Foley*, 203 F.2d 454, 455-456

(2d Cir. 1953), *rev'd on other grounds sub nom. Parissi v. Telechron, Inc.*, 349 U.S. 46 (1955); and *Bercovici v. Chaplin*, 56 F.Supp. 417, 418 (S.D.N.Y. 1944) with *Alcoa S.S. Co. v. Ryan*, 211 F.2d 576, 578 (2d Cir. 1954); *Local 783, Allied Industrial Wkrs. v. General Electric Co.*, 471 F.2d 751, 755-756 (6th Cir. 1973), *cert. denied*, 414 U.S. 822 (1973); and *cf.* 3 J. Moore, *Federal Practice* ¶ 15.08[4] at 907 (2d ed. 1974); 5 *id.* at ¶ 38.41. Plaintiff had failed to present the amendment within the time allowed by previous order of the court, the case was over three years old and had been set for trial almost three months earlier, and the court had allocated time on a busy calendar for a bench trial, not a jury trial, which would be bound to take longer. The court, however, did not strike the jury demand in the exercise of discretion but on the ground that the demand was untimely under Rule 38, Fed. R. Civ. P., as appears from his explanation of the reason for his action:

> "The rules clearly provide that if a jury demand is not made in writing at the time the complaint is filed, within ten days thereafter, your time to demand a jury—or ten days after you file the answer, why it is too late to file a jury demand."

We can hardly affirm an exercise of discretion that did not occur, and therefore must consider whether plaintiff was otherwise entitled to a jury trial.

The controlling question is whether Count III introduced a new issue into the case. Rule 38(b), Fed. R. Civ. P.; 5 J. Moore, *supra*, ¶ 38.41. We think it did not, although the matter is not free from doubt. The amendment seeking damages for breach of contract under rights created by state law did not, as counsel for plaintiff acknowledged in the trial court, allege new subject matter, "just a different theory of law." The amended complaint, in connection with which no jury demand was made, alleged the contracts, plaintiff's performance of his obligations thereunder, and the board's termination "in violation of the Plaintiff's contractual rights, and further in violation of his [constitutional] rights." If the amendment here in issue had not been filed, and we were to conclude from the evidence that plaintiff was entitled to prevail on the contract theory but not on the constitutional theory, we could not say the allegations of the existing pleading were insufficient to allow recovery. Under Rule 8(a), Fed. R. Civ. P., the pleader need not allege the legal theory on which he relies, *Siegelman v. Cunard White Star Ltd.*, 221 F.2d 189, 196 (2d Cir. 1955); 2A, J. Moore, *supra*, ¶ 8.14; and under Rule 54(c) of the rules he is to be granted any relief to which he is entitled even though he has not demanded it, 2A Moore, *supra*, ¶ 54.62. The allegations of termination in violation of contract right which appeared in the pleading before amendment were sufficient to raise the breach-of-contract issue, from which it follows that the amendment did not raise a new issue. *Cf. Lanza v. Drexel & Co.*, 479 F.2d 1277, 1310-1311 (2d Cir. 1973) (in banc). Accordingly, the District Court did not err in striking the jury demand.

The case is remanded for a hearing on damages.

AFFIRMED IN PART AND REVERSED AND REMANDED IN PART.

# Appendix F

# Up Again to the United States Supreme Court— October Term, 1975

IN THE

# Supreme Court of the United States

OCTOBER TERM, 1975

**No.**

BOARD OF JUNIOR COLLEGE DISTRICT NO. 515, COUNTIES OF COOK AND WILL AND STATE OF ILLINOIS, A BODY POLITIC AND CORPORATE, AND JAMES GRIFFITH, ANTHONY HANNAGAN, DORIS HILL, WILLIAM JACKSON, LESTER KLOSS, SHIRLEY MELLECKER AND THOMAS PORTER, INDIVIDUALLY AND AS MEMBERS OF THE BOARD OF TRUSTEES,

*Petitioners,*

*vs.*

RICHARD W. HOSTROP,

*Respondent.*

## PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

*To the Justices of the Supreme Court of the United States:*

Petitioners respectfully pray that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the Seventh Circuit, reversing in part the decision of the United States District Court for the Northern District of Illinois.

## OPINIONS BELOW

The Opinion of the United States Court of Appeals for the Seventh Circuit is reported officially at 523 F. 2d 569 (1975), and is reproduced as Appendix "A" to this Petition. The opinion of the District Court is reported officially at 399 F. Supp. 609 (1974).

When this cause was first filed, the District Court dismissed the Complaint for failure to state a claim upon which relief can be granted. That opinion was reported officially at 337 F. Supp. 977 (1972) and is reproduced as appendix "D" to this Petition. That decision was reversed by the United States Court of Appeals for the Seventh Circuit in a previous opinion, reported officially at 471 F. 2d 488 (1972). That opinion is also reproduced as Appendix "C" to this Petition.

## JURISDICTION

The Opinion of the United States Court of Appeals for the Seventh Circuit was handed down on September 24, 1975. Timely Petitions for Rehearing were filed by both parties. Those petitions were denied by an order dated October 30, 1975. A copy of that order is reproduced as Appendix "E" to this Petition. The jurisdiction of this Court rests on 28 U. S. C. and 1254(1).

## QUESTIONS PRESENTED

1. Whether the requirements of procedural due process prohibit elected members of a Community College Board of Trustees, who have exclusive responsibility under state law to do so, from discharging an admittedly incompetent and deceitful College President solely because the close working relationship between them required that the Board members witness first hand their Executive Officer's incompetence and deceit?

2. Whether a public body's execution, in good faith, of a legislative command, which results in an alleged denial of a discharged President's constitutional rights, subjects that public body to liability for damages?

## APPLICABLE CONSTITUTIONAL PROVISIONS AND STATUTES

Section 1 of Article XIV of the Amendments to the Constitution of the United States provides as follows: ". . . No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

Chapter 122 Ill. Rev. Stat., Section 103-26 (1969) provides: Chief administrative officer, personnel and teachers—Appointment and Salaries. [The Board of Class I Junior College Districts shall have the duty] to make appointments and fix the salaries of a chief administrative officer, who shall be the executive officer of the board, other administrative personnel and all teachers. In making these appointments and fixing the salaries, the board may make no discrimination of sex, race, creed, color or national origin.

Chapter 122 Ill. Rev. Stat., Section 103-32 (1962) provides: Tenure Policies. To establish tenure policies for the employment of teachers and administrative personnel, and the cause for removal. . . .

Chapter 122, Ill. Rev. Stat., Section 103-42 (1969) provides: Employment of Personnel. To employ such personnel as may be needed, to establish policies governing their employment and dismissal, and to fix the amount of their compensation. In the employment, establishment of policies and fixing of compensation the board may make no discrimination on account of sex, race, creed, color or national origin.

## STATEMENT OF THE CASE

The Plaintiff had been employed by the Defendant Board of Junior College Trustees since the Spring of 1967. From the inception of his position as College President, the Plaintiff had been granted a contract of employment, the first of which extended through June 30, 1968. In April of 1969, the Defendants granted Plaintiff a new contract which expired in June of 1971. When the April, 1970 school Board election generated concerns about the continuity of lay leadership at the College, the Defendants extended the Plaintiff's then existing contract an additional year, or until June 30, 1972. Unknown to the Petitioners herein, the Plaintiff had surreptitiously deleted a material term of the new contract, whereby he promised to devote full time to his duties.

Later in the spring of 1970, the Petitioners became fully aware of the Plaintiff's deception, as well as numerous dereliction of duty. The Plaintiff deliberately withheld information from his employers, mismanaged his assigned duties, and was guilty of gross insubordination and deceit while attempting to sabotage Board policy. During the spring and early summer of 1970, at regular Board meetings, the Plaintiff and the Petitioners agonized over these very charges. Throughout this period of time the Plaintiff also met informally with the Petitioners, and, at a six hour session held on June 20, 1970, the Petitioners took up with the Plaintiff all of the charges they had against him. At that time, the President was allowed to respond, and in two lengthy written replies to the Trustees, the Plaintiff attempted to answer all charges with documentary evidence. The parties again met on July 13, 1970, to no avail. Resolving nothing, the Petitioners scheduled a hearing with the Plaintiff at a Special Meeting of the Board of Education on the evening of July 23, 1970. The Plaintiff had ample advance notice of charges against him, was notified of the hearing, and had obtained counsel; but on the advice of that counsel, he refused to attend. His employment was therefore terminated.

In January of 1971, Plaintiff instituted this suit, alleging, *inter alia,* that he was wrongfully terminated in violation of his federal constitutional rights of free speech and procedural due process of law. The Petitioners moved for summary judgment, and the District Court, treating said motion as a Motion to Dismiss, dismissed the complaint for failure to state a claim upon which relief may be granted. *Hostrop* v. *Board of Jr. College District 515,* 337 F. Supp. 977 (N. D. Ill. 1972). The District Court held that, while Plaintiff could not constitutionally be terminated for speaking his mind, he could be terminated for insubordination, owing to the close working relationship between the Plaintiff and the Petitioners, thereby relying on *Pickering* v. *Board of Education,* 391 U. S. 563 (1968).

The Plaintiff appealed, and the United States Court of Appeals reversed, holding that Plaintiff's complaint contained allegations which, if true, constituted violations of Plaintiff's First Amendment rights absent specific proof of damage to the said close working relationship as required by *Pickering. Hostrop* v. *Board of Jr. College District 515,* 471 F. 2d 488 (7th Circ. 1972). The Court of Appeals remanded the case for a trial on the necessary factual issues. Defendants petitioned this Court for a writ of *certiorari,* which petition was denied. 411 U. S. 967 (1973).

The week prior to trial, Plaintiff moved to amend his complaint to allege an action based upon breach of contract, thereby filing a demand for trial by jury. The trial Judge allowed the amendment, but struck Plaintiff's jury demand as untimely. The ensuing bench trial lasted seven days, and resulted in the trial Judge's memorandum opinion which held for the Petitioners on all issues. *Hostrop* v. *Board of Junior College District 515,* 399 F. Supp. 609 (N. D. Ill., 1972). The Court specifically held that Plaintiff's fraudulently induced contract of employment was void, thereby depriving the Plaintiff of any property right which would give rise to an entitlement of a hearing. The Court also found that the Plaintiff had breached his contract in that the dismissal was not motivated by Plaintiff's expression of views in a certain Ethnic Studies Memorandum. As a matter of fact, the District Court held, Plaintiff's termination was fully justified and was the culmination of a series of confrontations and incidents which included the timing and concealment of the Ethnic Studies memorandum and seven other listed incidents. These events, the court went on to hold, substantially impeded the Board's normal functions, critically impaired the close personal relationship between the parties, and completely destroyed the Board's confidence in Plaintiff's loyalty and abilities. Furthermore, the Trial Judge found that the Board had offered the Plaintiff an informal and sufficiently impartial hearing but that the Plaintiff deliberately refused to attend, thereby waiving any rights to a hearing he may have possessed.

The Plaintiff appealed, and but for the issue of the impartiality of the hearing offered Plaintiff, the Court of Appeals held for the Petitioners on all issues. *Hostrop* v. *Board of Jr. College District 515*, 523 F. 2d 569 (7th Circ., 1975). Significantly, the Court of Appeals held the Trial Court's finding that Plaintiff was terminated for just cause which amounted to a destruction of the close working relationship between the parties, thus impairing the Board's functions. Yet the Court of Appeals found that the Petitioners had prejudged the ultimate issues prior to the meeting of July 23, 1970, at which they voted to dismiss the Plaintiff. In so doing, and without a finding that the Trial Court's factual conclusions were clearly erroneous, the Appellate Court reversed that part of the District Court's opinion which held that the Board was prepared to offer an informal, impartial hearing, and remanded the case for a hearing on the appropriate damages for the transgression of intangible rights denied the Plaintiff. The same Court denied both parties' timely petitions for a rehearing.

## REASONS FOR GRANTING THE WRIT

### The Decision of the United States Court of Appeals for the Seventh Circuit Is In Direct Conflict with Applicable Decisions of This Court

A. The decision of the Court below totally disregards and is in conflict with this Court's holdings in the cases of *Federal Trade Commission* v. *Cement Institute, et al.*, 333 U. S. 683 (1948) and *Withrow* v. *Larkin*, 421 U. S. 35 (1975).

The Court of Appeals conceded, as the District Court found, that Plaintiff was offered a hearing before the Defendant Board of Trustees on the issue of Plaintiff's continued employment as Chief Administrative Officer of the College. However, the Court of Appeals excused the Plaintiff's knowing and voluntary choice not to attend the hearing, on advice of counsel, by finding, without discussion, and contrary to the factual conclusions of the trial Judge without holding such findings of fact to be clearly erroneous, that "the Board prejudged [Plaintiff's] case before making a hearing available to him." Having found the Board to be no longer a decision maker of "apparent impartiality", the Court of Appeals concluded that the Plaintiff did not waive his right to a hearing by choosing not to attend the scheduled hearing of July 23, 1970.

The Petitioners respectfully submit that the decision of *Withrow* v. *Larkin*, 421 U. S. 35 (1975) is controlling as it is this Court's latest pronouncement with respect to the parameters of the Due Process Clause's requirement of an impartial tribunal. In *Withrow*, this Court also gave continued vitality to the decision of *Federal Trade Commission* v. *Cement Institute, et. al.*, 333 U. S. 683 (1948), and reaffirmed that decision's basic and long-standing precepts regarding the type and quantum of bias or prejudgment which may or may not be constitutionally tolerable. The *Withrow* and *Cement Institute* cases do not require that any and every form or measure of bias or prejudgment should disqualify a decision maker. On the contrary, both cases clearly stand for the proposition that, as well may the investigative and adjudicatory functions of a decision making body be combined in the same tribunal, so may there exist a certain type and a certain level of prejudgment, bias, or both on the part of the decision maker, all at harmony with the protections guaranteed by the Due Process Clause.

To be sure, there are forms of "bias" which seem to escalate the probability of unfairness to a constitutionally intolerable level: pecuniary interest, *Gibson* v. *Berrybill,* 411 U. S. 564 (1973), or personal animus, *Pickering* v. *Board of Education,* 391 U. S. 563, at pp. 578-579 n. 2 (1968). There are also shades of "prejudgment" which involve unacceptable risks of unfairness. *Gagnon* v. *Scarpelli,* 411 U. S. 778 (1973); *Morrissey* v. *Brewer,* 408 U. S. 471 (1972).

Just as certain, however, is that there exists a niche in the scheme of constitutional and administrative law for a type of prejudgment which may indeed involve predetermination of adjudicative facts, if not ultimate issues. Prejudgment or preconceptions founded on evidence adduced during the course of a "proceeding" is always permissible. *Federal Trade Commission* v. *Cement Institute, et al.,* 333 U. S. at pp. 700-703; *United States* v. *Grinnell Corporation,* 384 U. S. 563, at p. 583 (1965). Indeed, in *Perry* v. *Sinderman,* 408 U. S. 593, at p. 603 (1972) this Court remanded a teacher's discharge for a possible hearing before the *identical* tribunal which had already *unanimously* dismissed him for the very same substantive reasons and adjudicative facts, which would constitute the charges to be considered in such a hearing. [See also *In re J. P. Linahan, Inc.,* 138 F. 2d 650 (CA2, 1943).] It is only that preconception based on "extra-judicial" matters such as personal animus, pecuniary interest, and extra-judicial facts, which would disqualify a decision maker.

Without any analysis of the type, the quantum, and the effect of Petitioners' "prejudgment", the Court of Appeals has substituted its own standard of "apparent impartiality" for this Court's more thorough test of whether the Board would be "disabled from hearing and deciding on the basis of the evidence to be presented at the contested hearing." *Withrow* requires that a tribunal be presumed capable of judging a controversy fairly "on the basis of its own circumstances". *Withrow* v. *Larkin*, 421 U. S. 35 (1975). Nowhere does the Court of Appeals below refer to a basis, specific or otherwise, from which a determination may be made as to the effect of the Petitioners' prejudgment of fact and the ultimate issue on the ability of the Petitioners to "judge the controversy fairly on the basis of its own circumstances" at the offered hearing. Nor has *any* Court ever made a determination that the petitioners were unable to judge the controversy on the basis of its "own circumstances".

While the *Withrow* and *Cement Institute* cases permit prior contact with evidence even in an *ex parte* context, the preconceptions herein complained of were formed by the Petitioners in an adversary process and were founded solely on the very circumstances and evidence that, of necessity, would have been adduced at the July 23, 1970, hearing had the Plaintiff chosen to attend. The continuing development and presentation of "evidence" to the petitioners resulted not from an *ex parte* investigation, but from first hand observation in the conduct of a close working professional relationship with the Plaintiff. During the waning months of that relationship, as his incompetence and deceit became increasingly apparent, Plaintiff on many occasions responded to concerns of the Board members, and engaged in a campaign of "confession and avoidance". These concerns ultimately became the grounds for the dismissal which were upheld by both the trial Court and Court of Appeals. At the very least, Plaintiff's written and oral responses to Board members, and his attempts at "confession and avoidance" constituted a sufficiently adversary process that the development of pre-hearing opinions by the Petitioners was constitutionally permissible within the intendment of the *Withrow, Cement Institute*, and *Grinnell* cases. Under the circumstances of this case, the pre-July 23, 1970 continuum of meetings and exchanges may have itself satisfied the hearing requirements of due process. *Mullane* v. *Central Hanover Bank & Trust,* 339 U. S. 306 (1950).

Having been duly notified of the charges against him and of the pendency of the July 23, 1970 hearing, and having obtained counsel, the Plaintiff had the same opportunity that was afforded the Cement Industry in the *Cement Institute* case, and which was also afforded Dr. Larkin in the *Withrow* case, namely, to participate in an adversary hearing, to produce evidence, to cross-examine witnesses, and to argue as to the legal effect of proven or prejudged facts. Such opportunity to rebut facts and to mitigate the ultimate effect of those facts by argument is all that Due Process requires in these situations, notwithstanding the concurrent existence of a tolerable type and level of prejudgment of fact or the ultimate issue. *Withrow* v. *Larkin,* 421 U. S. 35, at n. 24; *Sniadach* v. *Family Finance Corp.,* 395 U. S. 337, at p. 343 (1969). Procedural due process is the watchdog of fundamental fairness. The numerous and varied requirements of procedural due process have been born of the Constitution to ensure, as much as possible, and under the circumstances of each case, that a *fair decision* shall be reached. The Petitioners respectfully submit that, considering the ongoing close professional relationship between the parties, and the hearing which the petitioners had offered to the Plaintiff, the Plaintiff cannot now complain that he was denied due process after first refusing an adequate hearing, and only later scouring the record in search of a procedural deficiency.

B. In holding the Board of Trustees liable for a violation of Plaintiff's right of due process, the Court of Appeals disregards this Court's decision in *Tenny* v. *Brandhove,* 341 U. S. 367 (1951); *Pierson* v. *Ray,* 386 U. S. 547 (1967); *Scheuer* v. *Rhodes,* 416 U. S. 232 (1974); and *Wood* v. *Strickland,* 420 U. S. 308 (1975). The above-cited cases hold that public officials subject to suit for depriving an individual of constitutional rights might assert common-law immunities in their defense, if the policies embodied by the doctrine of immunity invoked are applicable to the facts of the particular case.

At common law, legislative units of government are afforded protection against damage suits which attempt to redress individual rights allegedly violated as a result of the implementation of their policies. This insulation from liability represents a judicial determination that to entertain such suits would result in encroachment on peculiarly legislative tasks. Granting such immunity serves to protect the separation and balance of power between the different branches of government. *Weiss* v. *Fote*, 7 NYS 2d 579, 167 N. E. 2d 63 (1960); *Willis* v. *Department of Conservation and Economic Development*, 55 NJ 534, 264 A 2d 34 (1970); *Holtz* v. *City of Milwaukee*, 17 Wis. 2d 26, at p. 40, 115 N. W. 2d 618, at p. 625 (1962); *Spand* v. *Mounds View School District No. 621*, 264 Minn. 279, at pp. 292-293, 118 N. W. 2d 795, 803 (1962); Davis, *Administrative Law Text*, § 25.05, at pp. 480-483 (1970); and Jaffee, *Suits Against Governments and Officers*, 77 Harvard LR 209, at pp. 223-224 (1964). Official entities charged with implementation of these policies may be subject to suit if they fail to exercise due care in discharge of executory responsibilities. *Indian Towing* v. *United States*, 350 U. S. 61 (1957). However, they share the legislative immunity when their execution of duty pursuant to statute does not result in an independent or original basis upon which carelessness might be established.[1]

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[1] In *Dalehite* v. *United States*, 346 U. S. 15, 73 S. Ct. 956 (1953), this court held the government was immune from suit because the cause attacked certain discretionary determinations. This immunity was extended to subordinates who had implemented the policy. "It necessarily follows that acts of subordinates in carrying out the operation of government in accordance with official discretion cannot be actionable. If it were not so, the protection of § 2680(a) would fail at the time it be needed, that is, when a subordinate performs or fails to perform a causal step, each action or non-action being directed by the superior, exercising, perhaps abus-

(*Footnote continued on next page.*)

The Court of Appeals held that Plaintiff was denied due process because the Defendant Board had decided to terminate his employment prior to affording him an opportunity to address the charges which became the basis for his dismissal. Any lack of due process which occurred resulted only from a failure by the legislature to provide for a delegation of Board responsibilities at a time when it should recuse itself.

The Board has an obligation to hire and discharge personnel according to what it determines is in the best interest of the school district it operates. This duty is non-delegable. *Illinois Revised Statutes,* Ch. 122, Secs. 103-26, 103-32, and 103-42; *Board of Trustees* v. *Cook County College Teachers Union,* 22 Ill. App. 3d 1060, 318 N. E. 2d 193 (1st Dist. 1974).

Any bias which the Board developed regarding Plaintiff's fitness and competence as President of the College resulted from the frequent contact it necessarily kept with the President to dictate educational policy which it formulated and to determine whether its policies were being properly effectuated. When it became clear that Plaintiff was ineffective in discharging the critical duties of his office, the Board attempted to fulfill its statutory obligation with respect to its exclusive control over its personnel, and thus terminated his employment. The District Court found that the Board was justified in discharging Plaintiff and the Court of Appeals affirmed this determination.

The Board did offer Plaintiff a hearing prior to his termination before the only tribunal which could render a binding

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ing, discretion." 346 U. S., at 36. 28 USC, 2680(a), under which *Dalehite* was decided, provides that claims "based upon an act or omission of an employee of the government, exercising due care, in the execution of a *statute* or *regulation,* whether or not such statute or regulation be valid, or based upon the exercise or performance or the failure to exercise or perform a discretionary function or duty on the part of a federal agency or an employee of the government, whether or not the discretion involved be abused," is not actionable. This section of the statute represents the canonization of a common-law immunity. Davis, *Administrative Law Text,* § 25.03, at 474, 475 (1970).

decision as to whether Plaintiff should be discharged. The only way the Board might have attempted to comply with constitutional requisites as determined by the Court of Appeals would be by not terminating Plaintiff. Legislative design prevented the Board from delegating a duty which it could not, according to the Court of Appeals, execute in accord with the Constitution.

In terminating the Plaintiff for cause and by offering him a hearing, the Board was not found wanting in the exercise of due care with reference to Plaintiff's constitutional rights. The Court of Appeals, applying the standard announced by this Court to determine due care in suits alleging violation of constitutional rights *Pierson* v. *Ray*, 386 U. S. 547, at p. 555 (1967); *Scheuer* v. *Rhodes*, 416 U. S. 232, at pp. 245-249 (1974); *Wood* v. *Strickland*, 420 U. S. 308, at pp. 317-322 (1975), held that the Board's action did not deny Plaintiff his basic, unquestioned constitutional rights at the time it was effected and that it was not executed with malicious intent.

Thus, the common-law immunity available to official agencies that implement legislative policy in good faith should have been applied to immunize the Board as an entity from damages. The board's lot should not be so unhappy that it "must choose between being charged with dereliction of duty if [it does not discharge an ineffectual administrator] and be mulcted in damages if [it does]. *Pierson* v. *Ray*, 386 U. S. 547, at p. 555."

## CONCLUSION

For the aforementioned reasons and each of them, the Petition for a Writ of Certiorari should be granted. The Petitioners respectfully suggest that, as an additional reason for granting the instant Petition, this Court take cognizance of its order granting a Petition for Writ of Certiorari to the Supreme Court of the State of Wisconsin in the case of *Hortonville Education Association* v. *Hortonville Joint School District, No. 1*, 74-1606, Certiorari granted 96 S. Ct. 34 (1975).

Respectfully submitted,

Anthony Scariano
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Chicago Heights, Illinois 60411
*Attorney for Petitioners*

In The

# Supreme Court of the United States

October Term, 1975

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## No. 75-1035

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**BOARD OF JUNIOR COLLEGE DISTRICT NO. 515, COUNTIES OF COOK AND WILL AND STATE OF ILLINOIS, a body politic and corporate, and JAMES GRIFFITH, ANTHONY HANNAGAN, DORIS HILL, WILLIAM JACKSON, LESTER KLOSS, SHIRLEY MELLECKER and THOMAS PORTER, individually and as members of the Board of Trustees,**

*Petitioners,*

vs.

**RICHARD W. HOSTROP,**

*Respondent.*

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## RESPONSE TO PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

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*To the Justices of the Supreme Court of the United States:*

The Respondent, Richard W. Hostrop, respectfully prays that the Petition for Writ of Certiorari filed herein be denied.

## OPINIONS BELOW

The Opinion of the United States Court of Appeals for the Seventh Circuit is reported officially at 523 F.2d 569 (1975), and is reproduced as Appendix "A" to Petitioners' Petition. The opinion of the District Court is reported officially at 399 F. Supp. 609 (1974).

## QUESTIONS PRESENTED

Petitioners have briefed two questions in their Petition for Writ of Certiorari:

1. Whether the members of a Community College Board of Trustees may act as witnesses, investigators, judge and jury?

2. Whether a public body is immune from liability for discharging an employee without due process?

## APPLICABLE CONSTITUTIONAL PROVISIONS AND STATUTES

In addition to the Constitutional Provisions and Statutes set forth in Petitioners' Petition, the following are pertinent.

The Illinois Constitution of 1970, Article VIII, §4 states:

> "Except as the General Assembly may provide by law, sovereign immunity in this State is abolished."

Chapter 122 Ill. Rev. Stats., §103-11 states:

> "The board of each community college district is a body politic and corporate by the name of 'Board of Trustees of Community College District No. ............, County (or Counties) of ................ and State of Illinois' and by that name may sue and be sued in all courts and places where judicial proceedings are had. The State Board shall issue a number to each community college district, which number shall be incorporated in the name of the board of that district."

## STATEMENT OF THE CASE

Plaintiff commenced his employment as the President of Prairie State College in 1967. He was employed under a series of written employment agreements. On April 2, 1970, the Board of Trustees of the College unanimously voted to extend his then-existing contract, as a result of which he was entitled to employment as President of the College through June 30, 1972.

On June 20, 1970, an informal gathering of the members of the Board and Plaintiff was held at the home of the Board Chairman, Lester Kloss. At this meeting, denominated a "workshop," various of the Board members voiced certain concerns about the way in which Prairie State College was being administered. No minutes were taken at this gathering. As the workshop wore on into the late hours, Plaintiff was given no opportunity to respond to the various matters mentioned by the Board members. Significantly, nothing was said at this meeting which indicated that there was any intention or desire on the part of anyone to terminate Plaintiff's employment.

Plaintiff did evidence a desire to respond to the various matters which had been brought up by the Board members, and a date was set for the continuation of the discussion. This meeting, although re-set from time to time, was never held. The Board members themselves, however, met on several occasions subsequent to that meeting, but Plaintiff was never invited to attend any of those gatherings. Also, several regularly scheduled Board meetings were held, but the matters which had been discussed on June 20, were not placed on the agenda or discussed at any of these meetings.

During the period between June 20, 1970, and July 23, 1970, the Board Members decided that Plaintiff must either resign or be terminated, although they never informed Plaintiff that such action was being contemplated. The first that Plaintiff was aware that the Board intended to terminate his employment was on July 13, 1970, at 4:30 p.m., when he was suddenly called to meet with the Chairman of the Board and a special attorney who had been hired on that very same date. When he arrived, Plaintiff was informed that he had two choices: either resign or be terminated. He was also told that the Board desired that his employment problem be determined by July 24, 1970. Plaintiff, at this meeting, requested that he be given written charges and a notice of the reasons for the Board's action. This request was denied.

At no time prior to Plaintiff's termination, were any written charges, concerns, or reasons for Plaintiff's termination of employment prepared.

A special meeting of the Board was set for July 23, 1970, at which time the Board had decided to take action and carry out the decision to either force Plaintiff to resign or to be terminated. On July 22, 1970, a delegation of three Board members met with another administrator, one Ashley Johnson, and offered him the job of President of Prairie State College. Mr. Johnson accepted at that time, although the appointment was not formally confirmed until July 27.

Plaintiff was informed of the July 23 meeting two days prior to it, when he was informed by his attorney. The public notice for the meeting stated merely that the Board was meeting for the purpose of discussing certain "personnel matters," and made no reference to any intention to consider Plaintiff's termination. Not having received any written charges or reasons for dismissal prior to this meeting, Plaintiff refused to attend. At the meeting, the Board went on record as being unanimously in favor of terminating Plaintiff's employment. Two of the Board members who were not present were contacted by telephone, and in this manner, voted to terminate Plaintiff's employment.

On August 21, 1970, Plaintiff first received a written list of reasons for his termination, this list having been taped to his front door. After receiving this list, Plaintiff made a formal demand for a hearing, through his attorney. The Board, through its attorney, replied that no hearing would be given, as he was not entitled to a hearing of any kind.

Based upon this record, the Court of Appeals for the Seventh Circuit found as follows:

> "Our review of the evidence leaves us with the definite and firm conviction that plaintiff was never offered a fair hearing on termination, and that, in fact, the board prejudged his case before making any hearing available to him. There can be no real dispute that before the special session of the board on July 23, 1970, when plaintiff was to be afforded a hearing, the board had already decided to terminate him, and had in fact made a commitment to another person to hire that person as interim president. The board having prejudged the matter of plaintiff's termination before the July 23 meeting, and being no longer therefore 'a tribunal possessing apparent impartiality,' as required by *Hostrop I*, 471 F.2d at 495, plaintiff did not waive his right to a hearing by absenting himself from that meeting."

## ARGUMENT

### I.

### THE BOARD OF TRUSTEES HAD BECOME INCOMPETENT TO GRANT PLAINTIFF A HEARING TO WHICH HE WAS CONSTITUTIONALLY REQUIRED.

The decision by the Court of Appeals for the Seventh Circuit in this case, holding that Plaintiff had been deprived of that hearing to which he was entitled under the Due Process Clause, was not a departure from the rulings of this Court. Rather, it followed the requirements of due process as set down by this Court on many occasions. Defendants attempt to rely upon this Court's decision in *Withrow* v. *Larkin*, 421 U.S. 35 (1975), in arguing that it is not a violation of due process for one body or administrative agency to both investigate and decide factual issues. Plaintiff does not, and has not challenged this proposition. Nor did the Court of Appeals, either in its first or second decision in this case, deviate from the long-settled principles set down by this Court. In fact, this Court's decision in *Withrow* enforces the decision of the Court of Appeals in this case that Plaintiff was denied his rights to due process.

Boiled down to its bare bones, Defendants' argument is that at some time during a proceeding, any fact-finder, be he judge, jury or administrative agency, will begin to form an opinion as to the final judgment which will be made in the case, and that such a procedure is not constitutionally prohibited. No fault could be found with such a proposition. What defendants ignore, and what was the core of the holding by the Court of Appeals, is the proposition that here, those who made the decision to discharge Plaintiff, were the very same persons who had instituted the charges, had personal knowledge of the charges, would promulgate the charges against Plaintiff, institute the proceeding against Plaintiff, and implement that decision. In fact, the decision to terminate had been both made and implemented before the "hearing" was to be held, and before Plaintiff had been informed of any of the reasons for the contemplated action. Plaintiff had been told straight out that he had only two choices: 1) resign or 2) be terminated. There was to be no hearing, only action. Indeed, when Plaintiff demanded a hearing after receiving the reasons for his termination, he was informed by the Board that he was entitled to no hearing. It is obvious that the meeting of July 23, 1970, was merely for the purpose of formally ratifying a decision which had been firmly made.

Thus, the decision of the Court of Appeals in finding a violation of Plaintiff's due process rights was no deviation from the consistent rulings of this Court. Indeed, reference need be made no further than this Court's decision in *Withrow* to affirm that view:

> "Concededly, a 'fair trial in a fair tribunal is a basic requirement of due process.' *In re Mirchison*, 349 U.S. 133, 136, 75 S.Ct. 623, 625, 99 L.Ed. 942 (1955). This applies to administrative agencies which adjudicate as well as to courts. *Gibson* v. *Berryhill*, 411 U.S. 564, 579, 93 S.Ct. 1689, 1698, 36 L.Ed. 2d 488 (1973). Not only is a biased decisionmaker unacceptable but 'our system of law has always endeavored to prevent even the probability of unfairness.' *Murchison, supra.*" 95 S.Ct. at 1464.

As stated in ***Withrow,*** the vice prohibited in the kind of proceeding faced in ***Murchison*** was the fact that in there deciding whether the persons before him were guilty of contempt or not "he very likely relied on 'his own personal knowledge and impression of what had occurred in the grand jury room', an impression that 'could not be tested by adequate cross-examination.'" 95 S.Ct. at 1467. So too here, the Board members themselves were the accusers, not based upon any investigation which they had undertaken, but upon the impressions which they had formed in their own minds as a result of their working relationship with Plaintiff. They were not persons who came to the controversy neutral and began to form impressions after making an investigation, but the ones who had caused the investigation to begin, based upon their own personal knowledge and mental processes.

Indeed, Defendants have admitted this fact in their Petition herein, albeit unwittingly, when they state: "The continuing development and presentation of 'evidence' to petitioners resulted not from an *ex parte* investigation, but from first hand observation in the conduct of a close working professional relationship with the Plaintiff."

Whatever else Due Process may mean in varying contexts, it means that the prosecuting witness cannot also be the judge. That is the proposition for which the decision of the Court of Appeals stands, and nothing more. Such a decision presents no new or novel issue to this Court. That decision does not form the basis for a grant of Certiorari by this Court.

## II.

## THE BOARD OF DISTRICT COLLEGES IS ENTITLED TO NO IMMUNITY.

Defendants next argue that somehow the Board of Colleges, as an entity, is entitled to some kind of immunity from responsibility for having violated Plaintiff's rights. That proposition simply has no merit whatsoever.

This argument is based upon the proposition that to impose liability against the Board is to penalize it for the implementation of its policies. That, however, is not the case at all. The liability imposed here is for the violation of plaintiff's rights to due process—notice and a hearing before depriving him of property rights. Defendants somehow argue that the Board is entitled to immunity because the legislature failed to "provide for a delegation of Board responsibilities at a time when it should recuse itself." (Petition for Certiorari, p. 12) Such a contention has absolutely no foundation whatsoever. It was the Board which placed itself in the situation where it was unable to act properly. It was solely within the province of the Board to prevent itself from being placed in such a position. All it had to do was to grant Plaintiff the procedures to which he was constitutionally entitled. The Board was not somehow thrust into a situation where it had prejudged the issue. The fault was in acting improperly, not in the legislature having failed to foresee a way for the Board to extricate itself from a predicament of its own making.

Indeed, under Illinois law, it is clear that the Board is entitled to no immunity. The Illinois Constitution of 1970 clearly abolishes sovereign immunity.

The Illinois Supreme Court long ago abolished the doctrine of sovereign immunity insofar as it applies to local public entities such as school boards. In *Molitor* v. *Kaneland Unit School District*, 18 Ill. 2d 11, 163 N.E. 2d 89 (1959), the Illinois Supreme Court found that "the whole doctrine of governmental immunity from liability for tort rests upon a rotten foundation." *Id.* at 21. The Court concluded "that the rule of school district tort immunity is unjust, unsupported by any valid reason, and has no rightful place in modern day society." *Id.* at 25.

That is the background upon which the Board's liability must be judged. The argument presented by defendants is that the only way the Board could have complied with constitutional requisites was by not terminating Plaintiff. Such an argument is ingenuous. Although the Board itself must take action regarding Plaintiff's employment, pursuant to Illinois law, there is nothing which would have prohibited them from refraining from making any decision without giving Plaintiff a hearing. Further, there would have been nothing wrong with the Board having hired a hearing officer, or panel of arbitrators, or the like, to hear evidence and make recommendations upon which they might ultimately act.

The Board had several alternatives readily available to it to protect Plaintiff's rights. That they chose not to do so was not a policy decision, or the implementation of any legislative policy. Their actions were simply tortious. They did not offer Plaintiff the hearing to which he was entitled. Their failure to do so was not a discretionary act, nor a matter of policy. There is no issue presented here worthy of discussion.

## CONCLUSION

None of the points raised by Petitioners herein are unique or worthy of consideration by this Court. The Petition for Certiorari should be denied.

Respectfully submitted,

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IN THE

# Supreme Court of the United States

OCTOBER TERM, 1975

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**No.**

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**RICHARD W. HOSTROP,**

*Petitioner,*

vs.

**BOARD OF JUNIOR COLLEGE DISTRICT NO. 515, COUNTIES OF COOK AND WILL AND STATE OF ILLINOIS, a body politic and corporate, and JAMES GRIFFITH, ANTHONY HANNAGAN, DORIS HILL, WILLIAM JACKSON, LESTER KLOSS, SHIRLEY MELLECKER and THOMAS PORTER, individually and as members of the Board of Trustees,**

*Respondents.*

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## PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

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*To the Justices of the Supreme Court of the United States:*

Petitioner, Richard W. Hostrop, respectfully prays that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the Seventh Circuit, reversing in part the decision of the United States District Court for the Northern District of Illinois.

Petitioner brought this suit, alleging violation of his constitutional rights and breach of contract as a result of the termination of his employment as President of Prairie State College under a written employment agreement. After a bench trial, the District Court rendered judgment for respondents. On appeal, the Court of Appeals, affirmed the finding in favor of respondents on the breach of contract issue, reversed the finding in favor of respondents on the issue of violation of petitioner's constitutional rights to due process, as to the defendant Board as an entity only, and remanded with directions to hold a hearing on the issue of damages. Damages, however, were limited to those "damages fairly attributable to the failure to afford plaintiff the due process hearing to which he was entitled," but which were specifically held not to include wages to which he would have been entitled under his employment agreement.

## OPINIONS BELOW

The opinion of the United States Court of Appeals for the Seventh Circuit is as yet unreported, and is reproduced as Appendix "A" to this Petition. The opinion of the District Court is unreported, and is reproduced as Appendix "B" to this Petition.

When this cause was first filed, the District Court dismissed the complaint for failure to state a claim upon which relief can be granted. That opinion, which is unreported, is reproduced as Appendix "C" to this Petition. That decision was reversed by the United States Court of Appeals for the Seventh Circuit in a prior opinion, reported at 471 F.2d 488 (1972). That opinion is reproduced as Appendix "D" to this Petition.

## JURISDICTION

The opinion of the United States Court of Appeals for the Seventh Circuit was handed down on September 24, 1975. Petitions for rehearing were filed by both parties. Those petitions were denied on October 30, 1975. A copy of the order denying those Petitions is reproduced as Appendix "E" to this Petition. The jurisdiction of this Court rests on 28 U.S.C. §1254(1).

## QUESTIONS PRESENTED

**1. Whether an employee of a State agency whose constitutional rights to due process have been violated by refusing to grant him a hearing may be foreclosed from recovering damages based upon the salary due him under a written employment contract.**

**2. Whether a State employee's rights to freedom of speech may be denied to him under the guise that it is the manner in which the speech is communicated, rather than the content, which is being punished.**

## STATEMENT OF THE CASE

In the spring of 1967, Petitioner, Richard Hostrop, was hired by the Board of Junior College District No. 515, as President of Prairie State College, pursuant to a written contract, which extended through June 30, 1968. A new contract was subsequently entered into on April 10, 1969, extending through June 30, 1971. On April 2, 1970, that contract was extended, and a new written agreement signed, extending through June 30, 1972. On July 23, 1970, without the presence of Plaintiff, the Board, comprised of the individuals defendants herein, voted unanimously to terminate Plaintiff's employment, effective immediately.

No hearing was ever held, despite Plaintiff's demand for such a hearing. This suit was commenced in January, 1971. The suit alleged two grounds of violation of his constitutional rights: 1) discharge for proper exercise of his First Amendment Rights in writing a memorandum to other members of his administration discussing certain proposed changes in the college's ethnic studies memorandum; 2) violation of his rights to due process by failure to give him a notice of charges or a hearing in connection with his discharge. The District Court dismissed the suit for failure to state a claim upon which relief can be granted.

On appeal the United States Court of Appeals for the Seventh Circuit reversed and remanded for a trial. In so doing, the court found that dismissal of plaintiff for the writing of the memorandum discussing the ethnic studies program of the college could not be a legitimate ground for discharge unless the defendants were able to prove that the writing of this memorandum constituted "a serious impairment of the effectiveness of the working relationship between him and the Board."

The Court also found that the complaint had alleged at least two additional protected interests upon which defendants had infringed: 1) a deprivation of "liberty" by charging him with misrepresentations, supplying false information and withholding other information; and 2) a deprivation of "property" in the form of his employment contract. As a result of the existence of these interests, the Court held that plaintiff was entitled to "be given a notice of the charges against him, notice of the evidence upon which the charges will be based, a hearing before a tribunal possessing apparent impartiality, and a chance to present witnesses and confront adverse evidence at the hearing."

Upon remand, the plaintiff was given leave to amend his complaint to add an additional count to his complaint alleging breach of his written employment contract by defendants.

A bench trial was held by the District Court. The District Court ultimately handed down a written opinion, in which it was found that plaintiff had not demonstrated the existence of either a "liberty" or "property" right, and therefore was not entitled to a pretermination hearing.

The District Court also found that the Board was prepared to grant plaintiff an informal impartial hearing, but that plaintiff had waived his rights to such hearing by refusing to appear at the Board meeting at which the Board terminated his employment. In addition, the District Court held that Plaintiff's "termination was fully justified and was the culmination of a series of confrontations and incidents" which "substantially impeded the Board's normal functions, critically impaired the personal working relationship between the parties, and completely destroyed the Board's confidence in Plaintiff's loyalty and abilities."

This finding was reversed by the Court of Appeals, which held that Plaintiff "was never offered a fair hearing on termination, and, that, in fact, the board prejudged his case before making any hearing available to him," thus, "being no longer therefore 'a tribunal possessing apparent impartiality,' " as required by the Court of Appeals' first decision in this case.

In discussing the relief available to plaintiff for the violation of his due process rights, the Court of Appeals held that the Board, as an entity, was amenable to suit under 28 U.S.C. §1331. Relying upon this Court's decision in *Wood* v. *Strickland,* 95 S.Ct. 992 (1975), the Court, however, held that the individual Board members were not liable for the deprivation of plaintiff's rights. The Court based this holding upon the finding that there was no evidence that they had acted maliciously, that the defendants had not terminated plaintiff for exercising his first amendment rights, and finally, because in 1970, when the action took place, there was no reason for the individual members to know that plaintiff was entitled to a hearing prior to his termination.

The Court of Appeals therefore, reversed with directions to hold a hearing on damages. The range of damages permitted by the Court, however, was extremely limited. Based upon the finding of the District Court that plaintiff had been terminated for cause by defendants, the Court of Appeals found that "it is inconceivable that even if plaintiff had been accorded his procedural due process rights he would have been allowed to continue in office." Continuing from this premise, the Court held that "justice would not be served and plaintiff would be given a windfall at the expense of the taxpayers of the school district if we were to hold that he is entitled to the same damages that would be recoverable if the contract had been terminated without just cause." The Court also rejected the idea of reimbursement under the contract until the time of the adjudication of the constitution deprivation on the ground that the amount of recovery would be "wholly fortuitous since it would be dependent upon when the District Court could hear the case, and which would encourage dilatory tactics."

The Court held that the proper measure of damages is to be those damages attributable to "the deprivation of his procedural due process right to notice and a hearing," specifically denominating them "damages for the deprivation of intangible rights for which no pecuniary loss can be shown." The only guidelines given to be considered on remand were: the nature of the constitutional deprivation and the magnitude of the mental distress and humiliation suffered by the plaintiff, as well as any other injury caused as a result of being deprived of federally protected rights, but not . . . attorneys' fees."

## REASONS FOR GRANTING THE WRIT

### I.

### PLAINTIFF HAS BEEN DENIED HIS RIGHT TO DUE PROCESS BY LIMITING HIS DAMAGES TO DEPRIVE HIM OF PAYMENTS DUE UNDER AN EMPLOYMENT AGREEMENT.

While the Court of Appeals has found that Plaintiff's procedural due process rights have been violated, at the very same time it has stripped those rights of all meaningful content. This Court recently has considered several cases dealing with the substantive rights of due process of those subject to the control of State action. None of those cases, however, has presented the issue presented here: the correct measure of damages to be applied in a proper vindication of those rights. This case presents that issue in a uniquely appropriate context. A review of those cases which have considered that issue makes it obvious that confusion and conflict is starting to build among the various circuits. Unless this Court sets forth some definitive guidelines, that confusion will continue to proliferate. Constitutional rights will mean different things to different persons in different geographical locations. Where the constitutional rights are constant nationwide, the means by which deprivation of these rights are to be compensated must also be constant.

It is respectfully submitted that the decision by the Court of Appeals for the Seventh Circuit in this case takes a backward step in the clear course charted by this Court regarding Constitutional rights. While recognizing plaintiff's rights to due process, the measure of damages set forth by the Court of Appeals goes a long way toward depriving those rights of any actual content. It also misconstrues the import of those rights.

The touchstone of decision in cases of this nature was set forth by this Court in the companion cases, *Board of Regents of State Colleges* v. *Roth,* 408 U.S. 564, 92 S.Ct. 2701 (1972) and *Perry* v. *Sinderman,* 408 U.S. 593, 92 S.Ct. 2694 (1974). The nature of the interests protected by the due process clause were described thusly by this Court:

> "The Fourteenth Amendment's procedural protection of property is a safeguard of the security of interests that a person has already acquired in specific benefits. Those interests—property interests—may take many forms." *Board of Regents* v. *Roth, Id.* at 576, 92 S.Ct. at 2708.
>
> ". . . 'property' interests subject to procedural due process protection are not limited by a few rigid, technical forms. Rather, 'property' denotes a broad range of interests that are secured by 'existing rules or understandings.'" *Perry* v. *Sinderman,* 408 U.S. at 601, 92 S.Ct. at 1699.

The reason for due process protection of property rights is obvious: such a protected interest may be taken from an individual only in certain situations, and then, only in a proper manner. This, too, was made explicit by this Court in *Roth*:

> "Before a person is deprived of a protected interest, he must be afforded opportunity for some kind of a hearing 'except for extraordinary situations where some valid governmental interest is at stake that justifies postponing the hearing until after the event.' *Boddie* v. *Connecticut,* 401 U.S. 371, 379, 91 S.Ct. 780, 786, 28 L.Ed. 2d 113. 'While [m]any controversies have

> **raged about . . . the Due Process Clause, . . . it is fundamental that except in emergency situations (and this is not one) due process requires that when a State seeks to terminate [a protected] interest . . . it must afford "notice and opportunity for hearing appropriate to the nature of the case" *before* the termination becomes effective.' *Bell* v. *Burson*, 402 U.S. 535, 542, 91 S.Ct. 1586, 1591, 29 L.Ed. 2d 90." 408 U.S. at 570, 92 S. Ct. at 2705 (fn. 7).**

An implicit and undeniable corollary to that definition must be that until due process has been satisfied, the interest at stake still exists and has not been constitutionally terminated. The approach of the Court of Appeals in this case, however, allows an extinguishment of those protected property rights *ex post facto* upon an ultimate finding of cause for termination of these rights, at some time, in some manner, by some tribunal. Such an approach clearly negates the protection granted by the Fourteenth Amendment.

The Court of Appeals found that the defendants, by prejudging the merits of plaintiff's termination, made it impossible for them to grant him that fair and impartial hearing to which he is constitutionally entitled. Yet, at the same time, the Court held that "it is inconceivable that even if Plaintiff had been accorded his procedural due process rights he would have been allowed to continue in office." That finding turns constitutional rights upon their head. This approach forces State employees to have the worst of all worlds. In effect, this decision renders the constitutional rights, as declared by this Court, to be meaningless. It deprives a State employee who has been denied a hearing of any and all remedy for the injury which he has suffered. This approach allows State officials to refuse to grant an employee the hearing to which he is entitled, thereby forcing him to institute suit for the vindication of his rights, and forces him to bear the burden or proving that if a hearing were held he would have prevailed. Should the State prevail upon the issue of termination for cause, it will have lost little, if anything, for having failed to grant the constitutionally required hearing.

As a result of this ruling, the State employee's right to a hearing is illusory. Even if he prevails upon his claim that he should have been granted such a hearing, he will be allowed no real damages for his loss.

To award a State employee damages based upon the salary to which he would have been entitled is not to grant him a windfall, as stated by the Court of Appeals. As made clear by this Court in *Roth* and *Sinderman*, constitutional due process rights exist to protect property interests already held by the employee. He cannot be deprived of those interests *unless* and *until* a hearing has been held. To grant him a continuation of those property rights until such a hearing is held does not grant him a windfall, but simply grants him that which he already has and which the defendants are attempting to take from him. Until the proper procedures are followed by the State, those rights—the rights to salary as under a contract—still exist and cannot be extinguished. Yet, the approach taken by the Court of Appeals here does extinguish those rights *ex post facto* on the ground that if the hearing were held, those rights would have been properly extinguished. Such an approach is anathema to the existence of due process rights. Constitutional rights are not determined upon what would have happened, but upon what has in fact occurred. The employee's loss is fixed by the failure to grant him his rights. That loss cannot be truncated by a statement that if his due process rights had been granted, he would not have prevailed on the underlying issue.

To accept reasoning such as this would be to disrupt all rights held by citizens of this country. This holding allows a governmental entity to act with impunity, with no fear that it will be required to respond in any substantial damages if it violated an employee's rights.

It is submitted that the approach taken by the Court of Appeals for the Fourth Circuit in *Horton* v. *Orange County Board of Education,* 464 F.2d 536 (1972) is the proper one. There the Court found that had a hearing been held, the Plaintiff school teacher would have been found guilty of insubordination and subject to termination for cause. However, the Court held that since the Board had refused to grant the hearing to which the Plaintiff was constitutionally entitled, "she would be allowed to recover as damages her pecuniary loss by reason of the premature termination, computed for the period between the date she was disemployed and the date of the decision." *Id.* at 538.

The Court of Appeals in this case rejects this standard on the ground that compensation to the plaintiff is wholly fortuitous. Yet that is not truly the case. At all times the defendant Board holds it entirely within its power to grant the constitutionally required hearing. This hearing may be granted at any time. It is only the steadfast refusal to grant the hearing that requires trial before the Court. The amount of recovery, then, does not depend upon the ability of the Court to reach a trial, but upon the willingness of the defendants to live up to their constitutional obligations. The Board may terminate the running of these damages at any time by offering to grant the employee the constitutionally required hearing. If, at that time, the employee refuses to participate, then, the risk of loss is shifted to him. However, where, as here, the employee has at all times demanded the hearing to which he is entitled, his contractual salary rights must continue until the time that the hearing is held.

When dealing with constitutional rights, the vindication of the one who has been deprived of those rights, cannot be made to rest upon the determination of the underlying nonconstitutional dispute. In the area of criminal law, for example, vindication of the right to be protected from illegal search and seizure does not depend upon the ultimate guilt or innocence of the accused. Where evidence has been illegally seized, that evidence cannot be used against him. So too, in a subsequent civil suit for a deprivation of those rights, the guilt or innocence of the accused is irrelevant in reaching a determination as to whether his rights have been violated. *Kerr* v. *City of Chicago,* 424 F. 2d 1134, 1139 (7th Cir. 1970).

Similarly here, the State employee who has been deprived of his right to a hearing cannot have the ultimate finding that there was cause to discharge him used to deprive him of the pecuniary damages he has suffered until that determination has been made. The termination is not, and cannot constitutionally be effective until he has been granted that hearing. Until that hearing has been held, and cause for termination proven, the property rights still exist. They cannot be extinguished *ex post facto,* upon a decision as to whether there would have been cause to terminate if he had been given that to which he is constitutionally entitled. The fact is, he was not given that to which he was entitled.

To speak in terms of a "windfall at the expense of the taxpayers of the school district", as the Court of Appeals does, is to deny the worth and rights of the individual. That collectivist approach contains the seeds of a most pernicious attitude toward Constitutional rights, which must not be allowed to flower and bear fruit.

## II.

## FIRST AMENDMENT RIGHTS MAY NOT BE DENIED UNDER THE GUISE THAT IT IS THE MANNER OF THE EXPRESSION RATHER THAN THE CONTENT WHICH IS BEING PUNISHED.

Plaintiff charged in his complaint that one of the reasons given for his termination was that he had written a memorandum discussing proposed changes in the ethnic studies program at Prairie State College. In its first opinion in this case, the Court of Appeals for the Seventh Circuit held that the writing and dissemination of such memorandum could not be a ground for plaintiff's termination, referring to *Pickering* v. *Board of Education,* 391 U.S. 563 (1968):

> ". . . *Pickering* should not be read to authorize the discharge of a college president merely because he expresses an opinion that could be interpreted as a sign of disloyalty or an undermining of the confidence placed in him. Instead, *Pickering* holds that an employee's speech may be regulated only if a public entity can show that its functions are being substantially impeded by the employee's statements."
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> * * *
>
> "Here Dr. Hostrop, because of his background and leadership position as college president, sought to contribute to the discussion of a curriculum issue that would be decided by vote of the Board. To silence

> 'vigorous and robust debate' in the formulation of educational policy on the administrative level would certainly be contrary to the spirit of the *Pickering* decision."

In its second opinion, the Court of Appeals has completely negated the clearly proper holding as set forth above. Indeed, the language of the Court seems to completely ignore what it had said previously. The facts at the trial disclosed that on or about May 25, 1970, Plaintiff, in his position as President of Prairie State College, wrote a confidential memorandum to his administrative cabinet, composed of his closest administrative aides. Among the proposals discussed in this memorandum was the thesis of integrating the heretofore autonomous ethnic studies program with the rest of the college studies, so that Black History would become a part of the history department, Swahili would become a part of the language department, and so on. This confidential memorandum was leaked by someone to the student newspaper and printed on the night of graduation, which was the first time that any of the Board members became aware of its existence. The District Court found that one of the valid reasons for plaintiff's discharge was the timing and concealment of this memorandum from the Board.

This finding referred to the fact that the memorandum, which was clearly marked for discussion purposes only, proposed that these changes might be made within the next few weeks. In affirming the finding of the District Court on this issue, the Court of Appeals stated:

> "The evidence indicates, and the District Court could properly have found, that the board members were disturbed because a memorandum proposing the repudiation of their commitment to continue the ethnic

> studies program for another year was withheld from them until the fortuitous leak to the newspapers compelled its disclosure to them, which occurred less than three weeks before the date proposed in the memorandum for effectuation of this highly controversial action; and this 'timing and concealment' rather 'his expression of views' in the memorandum constituted one of the reasons for the board's action. This we think is the meaning of the District Court's finding, which we cannot say is clearly erroneous. These facts do not show a violation of plaintiff's first amendment rights."

This finding completely ignores the undisputed fact that no change could be made in this program by plaintiff, or by anyone else, except the Board itself. This matter would have to have been presented to the Board for any action to take place.

To attempt to avoid the holding of this Court in *Pickering* by such a subterfuge cannot be tolerated. The only meaning which can be attributed to this language is that if plaintiff had himself caused the memorandum in question to be printed, published and distributed about the campus, as well as to the Board members themselves, he could not have been punished for so doing. However, since he attempted to act in a responsible manner by restricting the circulation of this memorandum concerning a controversial program to those with a special right to discuss these ideas before presenting a concrete proposal to the Board, he can thereby be discharged from his position as President.

In effect, this holding states that the manner of disseminating ideas can be used by the State as an excuse to penalize a person whereas the content thereof cannot be so used. That this approach is a repudiation of this Court's holdings regarding freedom of speech is without question. Neither the District Court nor the Court of Appeals has pointed to any facts in this record which would support a finding that the publication of this memorandum, regardless of the manner in which it either was or was not disseminated, materially or substantially interfered with the requirements of appropriate discipline in the operation of the school. *Pickering* v. *Board of Education, supra., Tinker* v. *Des Moines Independent Community School District,* 393 U.S. 503, 89 S.Ct. 733 (1969). The fact is that the plaintiff disseminated ideas which the Board thought were not appropriate. This is clearly an impermissible ground for having taken action against him. To say that it was not the statements, but when and how they were stated, which led to the dismissal, is merely another way of saying that the things should not have been said. The adverse action has been taken against the speech, regardless of how one dresses up the justifications.

The decision of the Court of Appeals, while paying lip service to the First Amendment, negates the content of the right of free speech embodied therein. Speech cannot be examined in the abstract, but in the context of the manner of dissemination, and the audience to whom disseminated. To penalize as a result of the manner and the audience is the same as penalizing the speech itself. There is no difference. To attempt to create such a difference is to begin to destroy the right itself.

Academic freedom is a special concern of the First Amendment. *Keyishian* v. *Board of Regents,* 385 U.S. 589, 87 S.Ct. 675 (1967). "The vigilant protection of constitutional freedoms is nowhere more vital than in the community of American schools." *Shelton* v. *Tucker,* 364 U.S. at 487, 81 S.Ct. at 251. The importance of these freedoms does not diminish as one moves up the hierarchical ladder within a school system from classroom teacher to top-level administrator. Certainly it would be anomalous to hold that a classroom teacher has a greater range of freedom of speech than the chief administrator of the system.

Here, too, the Court of Appeals has promulgated a ruling which holds the pernicious seeds of repression. It flies in the face of the numerous holdings of this Court. Freedom of speech is perhaps the most fragile of rights. It is uniquely subject to being chilled by the threat of punitive action. The holding of the Court of Appeals in this case allows such a threat of punitive action. The door to repression must not be allowed to remain open the merest crack. It must be tightly bolted and barred, lest the most precious, unique, and fragile of our rights be eroded away to nothingness bit by bit.

## CONCLUSION

While purporting to protect the constitutional rights of public employees, the decision by the Court below in reality destroys any meaningful content to those rights. Constitutional requirements are not mere formalisms. They protect the basic fabric of our society. They define the relationship between Government and the individual. The opinion below, contrary to other opinions by other Circuits, deprives the individual of any meaningful means of redress when a governmental employee has been denied his rights to due process by his employer. The deck has been stacked against him. Even when he wins he loses.

In enacting 42 U.S.C. §1983, Congress decreed that every citizen whose rights have been denied by the State, is to receive proper redress for that denial. The decision below turns that mandate into an empty formalism, by denying damages for the taking of property without due process.

Further, the protection of freedom of speech has been side-stepped and evaded in a most unnatural and transparent manner. That most fragile of rights has once again been relegated to a secondary position in deference to the interests of the State. Every such attempt to subordinate the rights of the individual to the interests of the State must be resisted vigilantly.

Wherefore, petitioner prays that this Court's Writ of Certiorari issue and that the judgment below be reversed insofar as it prohibits Petitioner from recovering damages based upon his contractual rights, and that the cause be remanded to the District Court with directions to hold a full hearing on damages suffered by petitioner as a result of the violation of his constitutional rights by defendants.

Respectfully submitted,

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IN THE

# Supreme Court of the United States

OCTOBER TERM, 1975.

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**No. 75-917**

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RICHARD W. HOSTROP,

*Petitioner,*

*vs.*

BOARD OF JUNIOR COLLEGE DISTRICT NO. 515, COUNTIES OF COOK AND WILL AND STATE OF ILLINOIS, A BODY POLITIC AND CORPORATE, and JAMES GRIFFITH, ANTHONY HANNAGAN, DORIS HILL, WILLIAM JACKSON, LESTER KLOSS, SHIRLEY MELLECKER and THOMAS PORTER, INDIVIDUALLY AND AS MEMBERS OF THE BOARD OF TRUSTEES,

*Respondents.*

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## RESPONDENTS' BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT.

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*To the Justices of the Supreme Court of the United States:*

Respondents pray that the requested Writ of Certiorari not issue to review the judgment of the United States Court of Appeals for the Seventh Circuit entered on September 24, 1975.

## OPINIONS BELOW.

The Opinion of the United States Court of Appeals for the Seventh Circuit is reported officially at 523 F. 2d 569 (1975), and is reproduced as Appendix "A" to the Petition. The opinion of the District Court is reported officially at 399 F. Supp. 609 (1974), and is reproduced as Appendix "B" to the Petition.

When this cause was first filed, the District Court dismissed the Complaint for failure to state a claim upon which relief can be granted. That opinion was reported officially at 337 F. Supp. 977 (1972) and is reproduced as Appendix "C" to the Petition. That decision was reversed by the United States Court of Appeals for the Seventh Circuit in a previous opinion, reported officially at 471 F. 2d 488 (1972). That opinion is also reproduced as Appendix "D" to the Petition.

## JURISDICTION.

The jurisdictional requisites are adequately set forth in the Petition for Writ of Certiorari.

## QUESTIONS PRESENTED.

1. Whether an employee of a State agency whose constitutional rights to due process have been violated by refusing to grant him a hearing may be foreclosed from recovering damages based upon the salary due him under a written employment contract.

2. Whether a State employee's rights to freedom of speech may be denied to him under the guise that it is the manner in which the speech is communicated, rather than the content, which is being punished.

## REASONS FOR REFUSING THE WRIT.

### I.

The Court of Appeals' decision concerning the standards by which Petitioner's damages should be measured because of his deprivation of property without proper due process of law is in substantial conformity with other Federal Appellate and Federal District Court decisions. Where a petitioner has successfully demonstrated a denial of constitutionally protected rights, he is at least entitled to damages for deprivation of the right itself and compensation for any personal or pecuniary damage wrought by the deprivation. *Patton* v. *LaPrade*, 524 F. 2d 862, 871-872 (3rd Cir. 1975); *Rolfe* v. *County Board of Education*, 391 F. 2d 77, 81 (6th Cir. 1968); *Donovan* v. *Reinhold*, 433 F. 2d 738, 743 (9th Cir. 1970). If the deprivation were maliciously or willfully motivated the petitioner will, in addition, be entitled to punitive damages. *Patton* v. *LaPrade*, 524 F. 2d 863, 872 (3rd Cir. 1975).

Pecuniary damages for denial or loss of employment resulting from such a deprivation of constitutional rights entitle a petitioner to such compensation as he would have received had he not been deprived of his protected right. *Arkansas Education Association* v. *Board of Education*, 446 F. 2d 763, 770 (8th Cir. 1971); *Rolfe* v. *County Board of Education*, 391 F. 2d 77, 81 (6th Cir. 1968); *Wright* v. *Southeast Alabama Gas District*, 376 F. Supp. 780, 782 (M. D. Ala. 1974). Proof of an unlawful deprivation does not give an automatic right to compensation equal to the pay petitioner would have received had he held the job. "Wages sought must be properly owing to Plaintiff. This requires positive proof that Plaintiff was ordinarily entitled to the wages in question and *being without fault*, would have received them in the ordinary course of things but for the inequitable conduct of the party from whom the wages are demanded." *Jinks* v. *Mays*, 464 F. 2d 1223, 1226 (5th Cir. 1972) [Emphasis supplied].

Similar issues regarding compensatory damages for loss or denial of employment have been raised in litigation concerning Title VII violations. The decisions in these cases are in accord with decisions concerning constitutional deprivations. *Parham* v. *Southwestern Bell Telephone Co.*, 433 F. 2d 421, 428 (8th Cir. 1970); *Bing* v. *Roadway Express Inc.*, 485 F. 2d 441, 450-452 (5th Cir. 1973).

In awarding damages, the Court of Appeals in the instant cause claimed that Petitioner would be entitled to recompense for the deprivation of his constitutional right to a hearing, 523 F. 2d 569, 579, and any personal injury (such as possible emotional distress) which resulted therefrom. 523 F. 2d 569, 580. The Court refused to award Dr. Hostrop damages commensurate to the amount he would have received had he completed his employment through the term of this contract, largely because Respondents had demonstrated that he had been afforded a fair hearing he would have been justifiably terminated for cause. 523 F. 2d 569, 579.

The Petitioner asserts that his being denied contract wages as compensatory damages for deprivation of his right to a hearing strips him of the opportunity for effective redress of his rights, and would set a precedent which, in similar situations, would allow a Board of Education to deprive an employee of a constitutionally mandated hearing with impunity. Decisions of this Court and numerous Federal Appellate Courts have consistently held that a plaintiff can obtain effective redress for deprivation of constitutional rights by an award of damages solely for deprivation of the right itself. *Nixon* v. *Herndon*, 273 U. S. 536 (1927); *Sexton* v. *Gelbs*, 327 F. Supp. 134 (N. D. Tex. 1970) aff'd 446 F. 2d 904 (5th Cir. 1971) cert. denied, 404 U. S. 1062 (1972). Moreover, were a defendant to deny a plaintiff's clearly defined constitutional rights, plaintiff might in addition recover punitive damages. *Fisher* v. *Volz*, 496 F. 2d 333, 346-48 (3rd Cir. 1974); *Palmer* v. *Hall*, 380 F. Supp. 120, 135 (M. D. Ala. 1974).

The Petitioner states that because the operation of the exclusionary rule and damage relief for violation of fourth amendment rights are independent of the criminal guilt or innocence of the individual attempting to vindicate his constitutional rights, he is automatically entitled to damages for violation of his right to a hearing based on his contract damages. Beside grossly mistaking the workings of the exclusionary rule, such a position is devoid of any logic.

The primary purpose of the exclusionary rule is to deter law enforcement and prosecution officers from violating a citizen's fourth amendment rights. When government agents obtain evidence in willful or negligent disregard of an individual's right to be free from unreasonable searches and seizures, such evidence is therefor excluded. *U. S.* v. *Peltier*, .......... U. S. ..........; 95 S. Ct. 2313, 2317-2318. The logical counterpart in the instant cause would be the opportunity to recover damages whose assessment would serve as a deterrent against willful disregard of Hostrop's constitutional rights. Such a potential remedy exists in the form of punitive damages. *Patton* v. *LaPrade*, 524 F. 2d 862, 872 (3rd Cir. 1975). The Court of Appeals found that Respondents had acted in good faith when they discharged the Petitioner without affording him necessary procedural safeguards. 523 F. 2d 569, 578. Thus, punitive damages should not have been and were not assessed.

Petitioner's second example regarding a fourth amendment damage action would for the sake of logical consistency only require in this cause, that he be allowed to recover damage for violation of his right to procedural due process, regardless of the outcome of his contract claim. The Court of Appeals has held that he is entitled to damages for violation of that right although he was unsuccessful in proving damage to his contractual rights.

Finally, Dr. Hostrop requests that this Court adopt the decision in *Horton* v. *Orange County Board of Education*, 464 F. 2d 536 (4th Cir. 1972). The holding of this decision regarding damages contravenes every other Federal Appellate Court decision which is apposite. Furthermore, it affords him a windfall because had he been offered a hearing before an unbiased tribunal, he would have been terminated. Taxpayers should not be obligated to pay contract wages to an individual who materially breached that contract because its public agent blundered. in good faith, by failing to accord him a hearing required by the Constitution.

### II.

The Petitioner's second Question Presented for Review clearly does not establish an appropriate reason for granting his Petition. The Petitioner has failed to indicate in any fashion how the opinion of the Court of Appeals either directly conflicts with any applicable decisions of this Court, or directly conflicts with any decisions of the same or other Courts of Appeals. Very simply, Dr. Hostrop attempts instead, in Argument II of his Petition, to re-argue the merits of his case before this, the highest of tribunals, after having failed at trial and on appeal. Faced with fatal findings of fact at the two lower courts, the Petitioner would now have this Court consider his first amendment claim solely as a matter of legal absolutes, *in vacuo*, totally devoid of the factual realities surrounding his employment relationship with the Respondent Board of Trustees. Indeed, the state of facts adduced at trial is so antithetical to his first amendment claim that the Petitioner chooses to act as if the record below does not exist, and, incredibly, states in his Petition that:

> "Neither the District Court nor the Court of Appeals has pointed to any facts in this record which would support a finding that the publication of this memorandum, re-

> gardless of the manner in which it either was or was not disseminated, materially or substantially interfered with the requirements of appropriate discipline in the operation of the school".[1]

Having thus disposed of troublesome facts, the Petitioner states as the legal basis for his first amendment claim herein, and ostensibly as the reason why Certiorari should be granted, the postulate that "First Amendment rights may not be denied under the guise that it is the manner of expression rather than the content which is being punished." Such a characterization of the freedom of speech issue clearly assumes too much, for it implicitly assumes that there exists a protectible first amendment right to begin with. But the Petitioner cannot possibly mean to say that a state employee's right to freedom of speech is absolute, and that the content of his expression may *never* be curtailed under any circumstances, for it is the most basic of constitutional precepts that, *upon certain factual showing*, a State employer's interest in curtailing an expression of opinion may, on balance, outweigh the State employee's right to express that opinion. *Pickering* v. *Board of Education*, 391 U. S. 563, 568 (1968). The object of curtailment, and cause for discharge, may indeed be the very content or substance of that expression. *Pickering* v. *Board of Education*, 391 U. S. 563, 570 n. 3 (1968); *Arnett* v. *Kennedy*, 416 U. S. 134, 160-162 (1974).

Therefore, even if we were to assume *only for argument's sake* that the Petitioner's legal postulate is correct and that the first amendment's protection of the *manner* of expression is always qualitatively co-existent with that protection to be afforded to the substance of expression,[2] the Petitioner can take no solace whatsoever in the mere reiteration of that premise, as *both* the manner and content of expression are proper subjects of regulation in special circumstances. The special circumstances surrounding Dr. Hostrop's employment by the Board of Trustees have not escaped either the District Court or Court of Appeals below, namely, the close working relationship between a Board of Trustees and its chief executive officer, and the collapse of that relationship due to the insubordination and incompetence of the chief executive officer, all of which adversely affects the normal administration of the governmental entity.

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[1] If, as Dr. Hostrop incorrectly suggests in his Petition, it is difficult to pinpoint in the record the deleterious effect on the College's operation which may be specifically attributed to the Ethnic Studies Memo, the difficulty is wrought by the fact of Petitioner's pervasive incompetence and insubordination, a factor which makes it impossible to allocate a quantum of adverse impact to any *single* act of insubordination.

The District Court found, and the Court of Appeals concurred specially in the finding, that certain conduct of the Petitioner, *including the timing and concealment of the Ethnic Studies Memo,* "substantially impeded the Board's normal functions, critically impaired the personal working relationship between the parties, and completely destroyed the Board's confidence in the Petitioner's loyalty and abilities." In its first *Hostrop* opinion, the Court of Appeals held that Petitioner's complaint, on its face, stated a cause of action for denial of first amendment rights. However, in contemplation of the upcoming trial on remand, the Court of Appeals conceded that:

> "[d]efendants may demonstrate at trial that Dr. Hostrop's circulation of the memorandum was evidence of insubordination and actually produced the harmful effects which the *Pickering* decision indicated may be grounds for discharge. Such evidence could justify the discharge." 471 F. 2d 488, 493 n. 14 (7th Cir., 1972).

Such evidence *was* found at trial, and the timing and concealment of the Ethnic Studies Memo was held by both lower courts to be a permissible cause for discharge in light of the resultant deterioration of the necessary trust and confidence between the parties. The Petitioner and Respondents herein have both cited the *Pickering* case as favorable and, but for the ugly fact of the record below, Petitioner's citations of *Pickering* might be persuasive. However, the Petitioner may not now seek certiorari to have this Court review evidence and discuss specific facts. *United States* v. *Johnson,* 268 U. S. 220, 227. The instant Petition has not established a single reason why this Court should exercise its jurisdiction. Indeed, the very cases cited by the Petitioner require the result arrived at by the Court of Appeals below.

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[2] Indeed, the assumption is fundamentally *incorrect.* Though speech itself may be under the first amendment, the manner of its exercise or its collateral aspects may fall beyond the scope of the amendment. *Grayned* v. *City of Rockford,* 408 U. S. 104, 116-118 (1972); Brennan, *The Supreme Court and the Meiklejohn Interpretation of the First Amendment,* 79 Harvard Law Review 1, 5 (1965).

## CONCLUSION.

For the foregoing reasons, the Petition for a Writ of Certiorari should be denied or, in the alternative, such Petition for a Writ of Certiorari should be granted and, as to the issues presented herein, the Opinion of the Court of Appeals be summarily affirmed on the basis of the Opinion of that Court.

Respectfully submitted,

ANTHONY SCARIANO,
1450 Aberdeen,
Chicago Heights, Illinois 60411,
*Attorney for Respondents.*

# Appendix G

# Back Down for a Final Time in the United States District Court, Northern District of Illinois, Eastern Division—March 31, 1978

FILED
MAR 31 1978
Stuart Cunningham, Clerk
United States District Court

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

RICHARD W. HOSTROP,

Plaintiff,

v.

BOARD OF JUNIOR COLLEGE DISTRICT NO. 515, COUNTIES OF COOK AND WILL AND STATE OF ILLINOIS, a body politic and corporate, and JAMES GRIFFITH, ANTHONY HANNAGAN, DORIS HILL, WILLIAM JACKSON, LESTER KLOSS, SHIRLEY MELLECKER AND THOMAS PORTER, individually and as members of the Board of Trustees,

Defendants.

No. 71 C 147

## MEMORANDUM OPINION

This case is before us on remand from the court of appeals' reversal of Judge Austin's finding in favor of defendants. We are to determine the "damages fairly attributable to the failure to afford plaintiff the due process hearing to which he was entitled." Hostrop v. Board of Junior College District No. 515, 523 F.2d 569, 580 (7th Cir. 1975), cert. denied, 425 U.S. 963 (1976).

Plaintiff, a former president of a public junior college, who was discharged by the college board in July 1970, alleged that he was wrongfully terminated in violation of his federal constitutional rights of free speech and procedural due process, as well as his contract rights. Judge Austin, in a bench trial, found for the defendants.

The court of appeals found that plaintiff's termination was indeed justified, and that the district court's finding for defendants on the First Amendment issue was not clearly erroneous. It also found, however, that defendants' failure to afford plaintiff a hearing violated his procedural due process rights despite there having been just cause for termination of his employment. Thus, the court of appeals stated,

> "The wrong done plaintiff was not the termination of his employment, for that has been determined to have been justified, cf. Garcia v. Daniel, 490 F.2d 290 (7th Cir. 1973), but the deprivation of his procedural due process right to notice and a hearing. Plaintiff is entitled to damages for that constitutional violation." 523 F.2d at 579.

Noteworthy is the court of appeals' rejection of plaintiff's claim that recovery should be based in part upon alleged harm to his reputation and standing in the community. The court of appeals found that such harm, if any, was not caused by any wrongful action on the part of the defendants and was, in fact, more likely attributable to conduct of the plaintiff.

> "This court held in *Hostrop I* that plaintiff had stated a deprivation of liberty under *Board of Regents v. Roth*, 408 U.S. 564 (1972), in his allegation that the board had damaged his reputation by charging him with lack of veracity, 471 F.2d at 494, but the District Court found from the evidence that Hostrop himself had made public the board's charges when it had no intention of doing so. The court held that his standing in the community was therefore not injured by an action of the board, if it was damaged at all. We agree. Plaintiff's argument that he had to disclose the reasons to quell the rumors which were circulating does not establish that his reputation was injured by board action. Once the board decided to terminate plaintiff, the most it could do to prevent injury to his reputation was to maintain silence as to its reasons. See *Schrick v. Thomas*, 486 F.2d 691, 693 (7th Cir. 1973). The board is not responsible for plaintiff's decision that it would be better for his reputation to publish the reasons." 523 F.2d at 573-74.

The court of appeals also found that damages could be assessed only against the board as an entity and not against its individual members as they had acted in good faith sufficient to entitle them to the defense of official immunity. Specifically, in holding the board members entitled to immunity, the court pointed out "that in failing to give plaintiff a notice and hearing they did not act maliciously and, in view of the state of the law in 1970, could not reasonably have been expected to know that they were violating plaintiff's constitutional rights."[1] 523 F.2d at 579.

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1/ Elsewhere in its opinion, the court stated:

In addressing the issue of damages, the court of appeals recognized that the amount of damages for injury resulting from deprivation of procedural due process rights "cannot be determined by reference to an objective standard." 523 F.2d at 579. The damages that would have been appropriate had there been no just cause for termination of plaintiff's employment contract were rejected as "a windfall at the expense of taxpayers" where, as here, the plaintiff's termination had been justified and the sole deprivation was of notice and hearing before making that concededly rightful determination. Further, the court of appeals did not deem it appropriate to award punitive damages, presumably because defendants had not acted maliciously and were not chargeable with knowledge that they were violating plaintiff's rights.[2]

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> "There is no evidence in the record at bar suggesting that the defendant school board members acted with malicious intent to violate plaintiff's constitutional rights and not sincerely with the belief that they were doing right." 523 F.2d at 577.

2/ No deterrent or retributive purpose would be served by allowing punitive damages where defendants had acted in good faith sufficient to confer official immunity upon them. Lack of wrongful intent on the part of defendants makes retribution inappropriate; deterrence is unnecessary where, as here, there is no reason to expect future violations -- now that the law has been clarified and brought to the

The court indicated, however, that there is precedent for "recovery of non-punitive damages for the deprivation of intangible rights. . . ." 523 F.2d at 579. It went on to cite cases dealing with deprivation of voting rights, abridgment of equal opportunities to housing, illegal arrests and unlawful searches in which damages were awarded and which the court viewed as posing analogous damage problems.

The court of appeals then offered a prescription to aid the district court in determining damages in cases like the one before the court--_i_._e_., where there is a deprivation, but of an intangible right, affording no objective criterion for assessing injury. The court separated what it deemed to be the two component parts of such damage awards and indicated the factors relevant to the determination of each:

> "The civil rights cases just cited indicate that the non-punitive damages to be awarded may be _special, in the sense that they are related to the particular mental distress or other injury to the plaintiff, and general, in the sense that the damages are inherent in the nature of the wrong_. Thus the factors which the trial court should consider in making its

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attention of the defendants. Consequently, the Seventh Circuit has required willful or wanton conduct on the part of defendants for a punitive award to be appropriate. See _Jeanty v. McKey & Poague, Inc._, 496 F.2d 1119 (7th Cir. 1974).

> award will include the nature of the constitutional deprivation and the magnitude of the mental distress and humiliation suffered by the plaintiff, as well as any other injury caused as a result of being deprived of federally protected rights, but not, in view of *Alyeska Pipeline Service Co. v. Wilderness Society*, 421 U.S. 240, 95 S.Ct. 1612, 44 L.Ed.2d 141 (1975), attorneys' fees." (Emphasis added). 523 F.2d at 580.

The "special" component described by the court, while difficult to quantify, is clear in scope. It is presumably limited to damages awarded for injury to plaintiff's feelings -- *i.e.*, mental distress, humiliation and the like -- resulting from the deprivation. The cases cited by the court of appeals make clear that *proof* of such injury need *not* be offered to establish grounds for recovery of damages for mental distress, as such injury may be inferred from the circumstances of the deprivation.

Equally clear is the proposition that, while it is possible to infer injury despite failure to make an affirmative showing, such an inference can be rebutted if the defendants can show circumstances surrounding the deprivation which would negative such an inference. Thus, while an employee may be assumed to suffer mental distress when his employment is terminated without his being afforded a hearing, that is, an opportunity to vindicate himself, such an assumption may be defeated by a showing on the part of the defendants that plaintiff's conduct clearly justified his having been terminated and that plaintiff was aware of that fact. If plaintiff knows he has no grounds for vindication, he cannot be inferred to be greatly distressed over the loss of the opportunity to be heard.

The "general" component of damages described by the court of appeals is more troublesome as a matter of analysis than is the special component. The court, in elaborating the measure of damages, did not define "general" damages beyond stating that they are "inherent in the nature of the wrong." The failure of the court to clarify this phrase has caused some confusion on the part of the litigants. They seem to have construed it as permission from the court of appeals to relitigate, in the name of general damages, issues already disposed of by the court.

Plaintiff, for example, asks us to consider not only the failure of defendants to afford notice and hearing, but also to consider as aggravating circumstances the "callous" and "deceitful" manner in which the board acted in the course of depriving him of his procedural rights. He would also have us consider in the context of general damages the likelihood that such conduct will be repeated. Defendants would have us consider the bad faith exhibited by plaintiff in engaging in the course of conduct which justified termination of his employment contract.

The balancing of culpabilities which the parties suggest as appropriate in the determination of general damages seems to us to miss the mark. The alleged "deceitfulness" of defendants' conduct in the course of depriving plaintiff of his procedural rights and the likelihood that such deprivations will be repeated are relevant to whether punitive damages should be awarded. The court of appeals rejected any award of punitive damages in this case. That plaintiff's conduct justified termination of his employment contract by the board bears on the appropriateness of awarding plaintiff damages under the contract. Because plaintiff's conduct justified such termination, no damages under the contract are to be awarded here.

By distinguishing general damages from damages under the contract, the court of appeals seems to be saying that failure to afford plaintiff notice and a hearing in and of itself creates an entitlement to compensation independent of the considerations raised by plaintiff and defendant. The court, after disposing of those considerations, indicated that damages for the simple loss of procedural rights were appropriate nonetheless. Just as a person loses an intangible something when he is deprived of his franchise or is deprived of an opportunity to obtain housing through unequal treatment, plaintiff here loses something by being deprived of his opportunity to be heard, to prepare a defense and to respond to charges against him before being stripped of his public employment. This loss exists independent of the good or bad faith of the parties' conduct in connection with the deprivation of rights. We conclude that it is to this loss that the court of appeals would have us look in determining the general component of damages.

Though not identified as such in the cases cited by the court of appeals, the general damage component of the damages awarded in those cases seems consistently to have been within a relatively narrow range and at a relatively nominal level. While general, special and often punitive components were also involved in these decisions, where there was little mental distress or bad faith action on the part of defendants (i.e., the special and punitive components were small), awards consistently were less than $1,000.[3] This can be defined to represent the general component of damages.

It should be noted that, despite the fundamental nature of the rights embodied in the constitutional protection of procedural due process, there are reasons to believe that the general damage component attributable to such rights will be less than that attributable to loss of one's franchise, the opportunity to obtain housing, or one's liberty due to unlawful arrest. Procedural due process may be viewed as an intermediate right in the sense that its primary value is in affording an opportunity to vindicate some ultimate right to liberty or property. This is reflected in the very enunciation of the right to due process:

> "No person shall be . . . deprived of life, liberty or property, without due process of law; . . ." U. S. Constitution, Amendment V.

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[3] See, e.g., Sexton v. Gibbs, 327 F.Supp. 134 (N.D. Tex. 1970), aff'd, 446 F.2d 904 (5th Cir. 1971), cert. denied, 404 U.S. 1062 (1972); Smith v. Sol D. Adler Realty Co., 436 F.2d 344 (7th Cir. 1971); Seaton v. Sky Realty Co., 491 F.2d 634 (7th Cir. 1974); Steele v. Title Realty Co., 478 F.2d 380 (10th Cir. 1973). Cf. Allen v. Gifford, 368 F.Supp. 317 (E.D. Pa. 1973).

Absent the ultimate right to be protected, the notion of procedural due process is meaningless. If an "ultimate" right is infringed without the procedural requisites, the person whose rights have been infringed is entitled to an opportunity to vindicate the right and to compensation if, in fact, the ultimate right was infringed wrongfully. Voting rights, opportunities to housing and freedom from unlawful restraint may be distinguished from procedural due process in that they are ultimate rights in the above sense. They are rights to be protected for their intrinsic value, and not for their value in the protection of other rights.

While failure to afford procedural due process strikes at the heart of our system of justice, the appropriate remedy is to afford an opportunity to vindicate the right sought to be protected by due process and compensation for the wrongful deprivation thereof. In Hostrop, the court of appeals informs us that a plaintiff is also entitled to some compensation for the loss of his right to the protective procedures whether the ultimate substantive right was wrongfully withdrawn or not. Given the nature of the procedural due process right, this additional compensation need not, however, be large so long as the primary remedy of subsequent vindication of and compensation for the loss of the ultimate right is available. Thus, where deprivation of procedural due process is not accompanied by wrongful deprivation of an ultimate right, recovery will be nominal unless that deprivation is shown to have caused actual injury, *e.g.*, mental distress, humiliation and the like, injury flowing from the simple failure to afford an opportunity to vindicate and not from loss of the ultimate right sought to be vindicated. See *Carey v. Piphus*, 46 U.S.L.W. 4224 (March 21, 1978). Such injury is not to be considered in determining general damages; rather, it is relegated to the special damage component described by the court of appeals.

With regard to the special damage component, it is best to proceed by way of illustration. In *Donovan v. Reinbold*, 433 F.2d 738 (9th Cir. 1970), plaintiff was deprived of his public employment as a lifeguard in retaliation for his having exercised his First Amendment rights by authoring newspaper articles concerning city beaches. Not only was he wrongfully fired (*i.e.*, his termination was *not* justified), but this was done initially without a hearing. Further, after requesting administrative review and receiving a reinstatement order, his immediate superior refused to reinstate him. In awarding damages of $5,000, the court in Donovan said:

> ". . . Compensatory damages awardable in a Civil Rights Act case are not limited to the out-of-pocket pecuniary loss the complainant suffered. Damages can also be awarded for emotional and mental distress caused by the intentional tort. . . The district court found that Donovan was unusually dedicated to his job and that it meant more to him than simply a means of livelihood. It found that Donovan had tried to find similar employment in the same general area and had been unable to do so. We cannot say that the evidence, including the evidence of Donovan's emotional distress resulting from loss of employment, was insufficient to sustain the court's finding that Donovan had sustained compensatory damages of $5,000. . . ." 433 F.2d at 743.

In Donovan, then, where the deprivation of employment was not justified and plaintiff's failure to find other employment was linked to his wrongful termination, and his mental distress was attributable not only to the failure to be afforded his rightful opportunity to vindicate himself

also to the fact that his termination was indeed wrongful, plaintiff was deemed entitled to only $5,000. This sum was to include, in the language above, compensation for injuries resulting from deprivation of the ultimate right as well as the intermediate right, that is, those stemming from the loss of his employment as well as from the failure to provide a hearing.

In *Hostrop*, the first of these factors drops out. In *Donovan*, damages for loss of employment, mental distress resulting therefrom, failure to afford a hearing and mental distress connected with that failure are conflated. The portion attributable to mental distress from failure to be afforded a hearing would appear to be an insignificant portion of the whole.

In the case before us, special damages for mental distress attributable to the failure to be afforded notice and hearing would not seem great. Plaintiff deserves compensation for mental distress resulting from any unfair surprise resulting from the sudden termination of his employment, surprise which would have been eliminated by proper notice and hearing. The nature and extent of that distress is difficult to determine in light of the ultimate finding that the Board had good cause to dismiss him. As the court of appeals pointed out:

> ". . . The District Court has found, in findings we cannot say are clearly erroneous, that plaintiff was terminated for reasons amounting to *just cause*. Given the nature

> of these findings, *viz.*, that certain conduct of plaintiff identified by the District Court 'substantially impeded the Board's normal functions, critically impaired the personal working relationship of the parties, and completely destroyed the Board's confidence in Plaintiff's loyalty and abilities,' *it is inconceivable that even if plaintiff had been accorded his procedural due process rights he would have been allowed to continue in office*." (Emphasis added) 523 F.2d at 579.

Additionally, as previously indicated, any damage to plaintiff's reputation in the case before us cannot be attributed to defendants' failure to afford notice and hearing.

On the other hand, plaintiff apparently believed at the time that the Board's conduct was unjustified and was undoubtedly distressed at his peremptory dismissal. He probably, however, would have been equally distressed at his ultimate dismissal after a due process hearing. In any event, we find it difficult to believe that his damages resulting solely from deprivation of his due process rights are greater than those suffered by Donovan in both losing his employment without justification and without due process.

Given these considerations, a damage award of $4,000 seems in order. In terms of the court of appeals' formula, this sum should consist of $1,000 in general damages and $3,000 in special damages. Since the court of appeals determined that attorneys' fees should not be awarded by this Court, citing *Alyeska Pipeline Service Co. v. Wilderness*

Society, 421 U. S. 240 (1975), no allowance is made therefor.

Plaintiff also briefed a request for $5,113.50 in damages for unpaid leave and vacation time which accrued under the contract prior to termination. Such damages, if any, are attributable to the termination of plaintiff's employment and not to the deprivation of his procedural due process rights for which this action was brought and for which the court of appeals has held him entitled to recovery. Since the state law issue of unpaid leave and vacation time is not before us, we do not make any allowance for unpaid leave and vacation time in our damage determination.

An appropriate order will enter.

United States District Judge

DATED: MARCH 31, 1978

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FILED

JUL 28 1978

H. Stuart Cunningham, Clerk
United States District Court

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

RICHARD W. HOSTROP, )
)
Plaintiff, )
)
v. ) NO. 71 C 147
)
BOARD OF JUNIOR COLLEGE )
DISTRICT NO. 515, etc., )
et al., )
)
Defendants. )

## MEMORANDUM OPINION AND ORDER

On April 17, 1978, the plaintiff moved both for "relief from judgment" and asked that the judgment previously entered in this case on March 31, 1978 be amended to include an award to plaintiff of $5,113.50 for unpaid leave and vacation time and an award of plaintiff's attorney's fees pursuant to 42 U.S.C. §1988.

In our original opinion we stated the reasons why we were not dealing with the question of accrued unpaid leave and vacation time. It is clear from the opinion of the Court of Appeals that that issue was never presented to that court and that it was therefore not before us on remand. In addition, we were advised that a case between the same parties in the state courts was pending in which the issue of vacation and leave time was clearly presented. Since this is not a question over which the federal courts would have jurisdiction under any other than pendent jurisdiction grounds, since the appellate court did not remand the case with any directions concerning accrued vacation and leave time and since the matter was pending in the state court, we deemed it inappropriate to rule thereon. Nothing that the plaintiff has stated in its brief in support of its motion causes us to change our opinion that regard.

Whether or not plaintiff is entitled to any accrued vacation or leave time compensation is obviously a question of fact which has not been presented to this Court for determination. Inasmuch as the Court of Appeals determined that the plaintiff's discharge and termination was for cause, and that his only entitlement for damages was for the denial of a due process hearing, there is no way that, absent a trial on the question of his right to accrued vacation and leave time or compensation in lieu thereof we could possibly have awarded any monetary judgment for those items. And, since the remand was carefully limited to an ascertainment of those damages which would properly be awardable for the denial of the due process hearing, there was no basis on which we could have held a trial on the merits of the vacation and leave time question, and, in fact, plaintiff did not ask for any such hearing.

For the foregoing reasons, the plaintiff's motion for damages in the amount of $5,113.50 for unpaid leave and vacation time is denied.

The second modification of the judgment previously entered relates to an award of attorney's fees for plaintiff's counsel. This award is sought pursuant to the provisions of the so-called "Civil Rights Attorneys' Fees Award Act of 1976" (42 U.S.C. §1988, as amended). That Act provides that in the discretion of the trial court fees may be awarded to the prevailing party in certain cases including cases such as the instant one brought pursuant to the federal civil rights statutes.

It is to be noted first that the award of such fees is discretionary with the court. Second, the statute requires that they be awarded, if at all, only to the "prevailing party."

In the instant case there is a serious question as to whether or not the plaintiff is in fact the prevailing party, although it is clear that with respect to his right to a "due process" hearing, he is the prevailing party. For instance, there is the fundamental issue under the civil rights statute which was raised by the plaintiff; we conclude that with respect thereto, plaintiff did prevail and he would be entitled to attorney's fees to the extent that the attorney directed his activities not to the issue of whether or not he was properly discharged, on which he is clearly the losing party, but on the relatively narrow question of whether or not he was entitled to a due process hearing on which he is the prevailing party.

We are prepared, therefore, to consider, without determining whether or not plaintiff is entitled to any such fees, a petition for fees and expenses limited carefully and precisely, if possible, to the time spent on the "due process" issue.

An order appropriate with the foregoing will enter.

July 28, 1978

United States District Judge

# Appendix H

## Retainer Agreement Between Attorneys Elmer Gertz and James Pappas with Richard W. Hostrop

cr: 3/8/73

## RETAINER AGREEMENT

I hereby retain and employ ELMER GERTZ and JAMES PAPPAS, attorneys at law, to bring suit upon and to represent me in the prosecution and recovery or settlement of my claim and cause of action against the Board of Illinois Junior College District No. 515, both as an entity, an d against the individual members thereof, for damages arising out of their discharge of me on or about July 23, 1970, and the deprivation of other rights belonging to me at that time, prior thereto, and subsequent thereto, and I agree to pay to them for their services rendered and to be rendered, pursuant to this retainer and employment, a sum equal to forty per cent (40%) of any such amount which I shall recover from said parties on my said claim and cause of action on trial in Court, or which I shall receive in settlement thereof, whether the settlement be made by me directly or through said attorneys, or by any other person or agency whatsoever, together with all reasonable and necessary advances, costs and expenses, if any, paid or incurred by said attorneys for me in connection with the preparation, prosecution and handling of said claim and cause of action.

It is further agreed, that any amount awarded to me as and for attorneys' fees shall be retained by said attorneys and credited against the above 40% of recovery, and that all monies heretofore received by said attorneys as and for fees shall also be credited against the said 40%, and I further agree to pay all costs and expenses as they arise, within a reasonable time after receiving notification thereof.

Richard W. Hostrop

RICHARD W. HOSTROP

WE hereby accept the above claim and cause of action, and agree to prosecute the same to settlement or judgment, on the terms above set forth.

ELMER GERTZ

James Pappas

JAMES PAPPAS

DATED: March 8, 1973

"The purpose of life is to matter...to have it make a difference that you live at all...by using whatever talents you may have to the very fullest."

*Evelyn McClellan*

"If you have tried to do something and failed, you are vastly better off than if you had tried to do nothing and succeeded."

*Flora McKennon*

"Not everything that is faced can be changed, but nothing can be changed until it is faced."

*Leora Ask*

"Our success will be measured by what we do with the circumstances...not by the circumstances themselves."

Connie Rezabek

"The difficulties of life are intended to make us better, not bitter." *Jim Vask*